TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1950

No. 15

STATE OF MISSOURI, AT THE RELATION OF SOUTHERN RAILWAY COMPANY, PETITIONER,

vs.

WALDO C. MAYFIELD, JUDGE OF THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI, AND HIS SUCCESSORS, AS PRESIDING JUDGE OF SAID COURT

No. 16

STATE OF MISSOURI EX REL. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, PETITIONER,

vs.

DAVID J. MURPHY, JUDGE OF THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI, AND HIS SUCCESSORS, AS PRESIDING JUDGE OF SAID COURT

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

PETITIONS FOR CERTIORARI FILED FEBRUARY 11, 1950.

CERTIORARI GRANTED MARCH 27, 1950.

SUPREME COURT OF THE UNITED STATES

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Florida—Hagen v. Viney (1936), 169 So. 391, 124 Fla. 747;
[fol. 23] Pennsylvania—Overfield v. Pennroad Corp., 113 F. (d) 6 (C. C. A. Pa.);
Texas—Morris v. Mo. Pac. R. Co. (1890), 78 Tex. 17, 14 S. W. 228, 9 L. R. A. 349;
U. S.—Gulf Oil Co. v. Gilbert, 91 L. Ed. 1055, 330 U. S. 501;
and many English cases.

In 1928 and 1929 when the problem of overcrowded dockets in the courts of the State of New York was urgent and pressing, the state bar association appointed a committee to study the problem and, in connection with that problem, there appeared in 29 Columbia Law Review, page 1, an article by Mr. Paxton Blair concerning itself with this subject and stating as follows:

> "At the outset it is to be noted that new legislation is not needed before any benefit can be expected to flow from the remedies we propose; for the doctrine in question (forum non conveniens) involves nothing more than an appeal to the inherent power possessed by any court of justice—powers that is to say which are incontestably necessary to the effective performance of judicial functions."

It is submitted that our courts have the right and power to exercise their discretion in determining the applicability of the doctrine of forum non conveniens to actions brought in this state by non-residents against non-residents on claims arising in foreign jurisdictions under foreign law.

There remains only the treatment of the Minnesota decisions. Professor Roger S. Foster of the Yale University Law School has written two excellent articles on the place of trial, which articles appear in 43 Harvard Law Review, page 1217, and 44 Harvard Law Review, page 41. In the [fol. 24] latter article, Professor Foster treats among other

[fols. 1-2] [Caption omitted]

NOTICE OMITTED

[fol. 3] **IN THE SUPREME COURT OF MISSOURI**

STATE OF MISSOURI ex rel. SOUTHERN RAILWAY COMPANY, a Corporation, Relator,

vs.

THE HONORABLE WILLIAM L. MASON, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, Respondents

Original Proceeding in Mandamus

PETITION FOR WRIT, SUGGESTIONS AND EXHIBITS IN SUPPORT THEREOF

To the Honorable Judges of the Supreme Court of Missouri:

Comes now Southern Railway Company, a corporation, relator above named, and respectfully states and shows to the court:

1. That it is and was at all times hereinafter mentioned a corporation organized and existing under the laws of the State of Virginia and duly authorized to do business in the State of Missouri.

2. That respondent, William L. Mason, is a duly elected, qualified and commissioned judge of the Circuit Court of [fol. 4] the City of St. Louis, State of Missouri, and was on or about January 1, 1949, duly appointed, and was at all material times herein mentioned and is now, presiding judge in Division No. 1 of said Circuit Court, and said respondent, William L. Mason, made and entered of record the order hereinafter complained of, refusing to entertain jurisdiction and exercise discretion and rule on the merits of the issues presented by relator's motion to dismiss cause No. 23,161-D, pending in said court. And relator further represents that all motions in connection with pleadings in law cases, prior to trial, are heard and determined in Division No. 1 of said Circuit Court.

things the Minnesota decisions. His comment is, we think, a fitting close to these suggestions. At page 59 he states:

"The most interesting question suggested by the Douglas case is what will happen in the states which have thus far felt a constitutional compulsion to entertain vexatious suits by plaintiffs who are citizens of other states. Will they now feel free to treat questions as to the state of trial as sensibly as they do questions as to the county of trial, and will they regard citizens of sister states as no more entitled to abuse their processes than aliens and foreign corporations? This question was raised recently in Minnesota in the case of Boright v. Chicago, R. I. & Pac. R. R. The case was recognized as of great importance. Numerous counsel filed briefs as amici curiae—representatives of railroads and, on the plaintiff's side, counsel for labor unions and counsel whose interest is not stated of record. These last, one may infer, were interested as frequently appearing for non-resident plaintiffs in personal injury cases. The victory was for the personal injury racket—not, however, without a vigorous dissent. Thriving under a highly organized and thus far judicially tolerated system of ambulance chasing, and the old beliefs as to the effect of the privileges and immunities clause, the spectacle of vexatiously imported litigation has long been familiar in Minnesota. The majority opinion in the Boright case suggests that judges are perhaps becoming callous to it. It seemed that the common law power to adapt procedure to prevent its abuse had atrophied from disuse, and the court found on non-constitutional grounds that it was powerless to dismiss such suits. Instead of regretting this situation, it glorified the Minnesota law for its hospitality to strangers, thus indicating that it was still thinking in terms of a philosophy which assimilates [fol. 25] a would-be litigant to a laborer or business man entitled to a free opportunity to try his luck in whatever state he chooses. Compelled by the United States Supreme Court to abandon any constitutional sanction for this theory, the majority of the Court still stubbornly adheres to it as determining at least the domestic policy of the state. The decision is hardly one to commend itself for general acceptance."

3. Relator, Southern Railway Company, further states that on or about October 13, 1948, an action was filed in the Circuit Court of the City of St. Louis, State of Missouri, by Lelia M. Blevins, administratrix of the estate of Roderick E. Blevins, deceased, as plaintiff, against Southern Railway Company, a corporation, defendant (relator herein), said action being numbered 23,161-D; petition therein is attached hereto and marked Exhibit "A."

4. That summons in said cause was thereafter issued and served upon defendant on October 15, 1948.

5. That said cause of action arises out of an alleged accident occurring in the train yards of relator, said yards being known as "The Frisco Yard," being in the states of Virginia and Tennessee and located on the boundary between the said states, and plaintiff seeks damages in the amount of $100,000. Plaintiff and defendant in said cause are non-residents of the State of Missouri and jurisdiction is based on the Federal Employers' Liability Act.

6. Your relator further represents that on November 13, 1948, relator duly and promptly filed its motion to dismiss [fol. 5] said action, cause No. 23,161-D, in the Circuit Court of the City of St. Louis, State of Missouri, on the ground of forum non conveniens. Said motion is attached hereto and marked Exhibit "B."

7. That thereafter on the 11th day of February, 1949, said motion was presented, argued and submitted in Division No. 1 of the said Circuit Court and to respondent, William L. Mason, judge thereof, duly qualified as aforesaid.

8. That memoranda of the plaintiff and defendant (relator) in said cause were presented to respondent and on the 14th day of March, 1949, respondent entered his order ruling on said motion, in words and figures as follows:

> "Defendant's motion to dismiss upon the ground of forum non conveniens denied upon the sole ground that in the opinion of the Court, the Court has no jurisdiction or discretion to entertain or grant such a motion. Court's memo filed.
>
> William L. Mason, Judge."

A copy of said order is attached hereto and marked Exhibit "C".

9. Relator further states that respondent has by his order of March 14, 1949, refused to rule upon the merits of relator's motion duly filed in said cause No. 23161-D in the Circuit Court of the City of St. Louis, State of Missouri, and refused to exercise his proper discretion and jurisdiction and that unless the said respondent is ordered and compelled to set aside and vacate respondent's said order dated March 14, 1949, and to exercise his said discretion and jurisdiction in said cause No. 23161-D, relator will be compelled to engage in long, expensive, burdensome and vexatious litigation and has no other adequate remedy.

[fol. 6] 10. Relator further states that there are now pending in said Circuit Court numerous actions involving similar circumstances, and others are continually being filed, and the refusal of respondent to exercise his proper jurisdiction presents questions of extraordinary importance and interest.

11. Relator further states that it is without an adequate remedy in the premises unless this Honorable Court will interfere and grant it a writ of mandamus as hereinafter prayed.

Wherefore, relator prays that this Honorable Court issue its alternative writ of mandamus commanding that respondent set aside his said order of March 14, 1949, in cause No. 23161-D and to exercise his proper jurisdiction and to determine on the merits the issues presented by relator's said motion to dismiss heretofore filed in said cause No. 23161-D aforesaid; or failing that, that respondent show cause why he should not so vacate said order and proceed to exercise his proper jurisdiction and discretion in the premises and that upon a hearing hereof the direction of said alternative writ be made permanent and that the proceedings in said cause No. 23161-D now pending in the Circuit Court of the City of St. Louis be stayed until such hearing and for such other and further relief as may to this Honorable Court seem meet and proper in the premises.

Southern Railway Company, Kramer, Campbell, Costello & Wiechert, Fordyce, White, Mayne, Williams & Hartman, Thomas Rowe Schwarz and F. W. Schwarz, Attorneys for Relator.

[fol. 7] *Duly sworn to by F. W. Schwarz. Jurat omitted in printing.*

[fol. 8] Suggestions in Support of Petition for Writ of Mandamus

I

Statement of Facts

The facts of this matter briefly stated are that in the month of October, 1948, plaintiff, a resident of the State of Tennessee, brought an action under the Federal Employers' Liability Act in the Circuit Court of St. Louis in which she joined as defendant the Southern Railway Company, your relator herein, said company being a corporation organized and existing under the laws of the State of Virginia and having no track, operating no trains, and doing no intrastate business in the State of Missouri. Thereafter, in due time, your relator, defendant in said action, filed its motion to dismiss the cause on the ground of forum non conveniens. The motion was presented to respondent as presiding Judge of Division No. 1 of the Circuit Court of the City of St. Louis, in which division all pretrial motions in law cases are heard. The motion was taken under submission by respondent, briefs of the parties were filed and thereafter on March 14, 1949, respondent entered the order complained of, in which said order he determined that he had no jurisdiction or discretion to entertain said motion. In connection with this order, respondent filed his memorandum, copy of which is attached hereto and marked Exhibit "D", in which respondent purportedly relies on the decision of this court in the case of Bright v. Wheelock, 20 S. W. (2d) 684, and the interpretation allegedly given therein to Sections 1163 and 1180 of the Missouri Revised Statutes. 1919. As hereinafter pointed out, the Bright case, supra, is not authority for this holding and the statutes referred to have not [fol. 9] been construed with respect to this point and therefore it is submitted that said ruling of respondent is erroneous and inconsistent with the law of Missouri.

and defendant were engaged in interstate commerce and in interstate transportation by railroad at the time of the occurrences herein pleaded.

IV

That at all times herein mentioned, the defendant was engaging in the business of commerce, in, through and between the several states and territories of the United States as a common carrier by steam railroad, and for a long time prior to the date plaintiff's intestate suffered and sustained the injuries causing his death, all or part of the plaintiff's intestate's duties were in the furtherance of defendant's business of interstate commerce and interstate transportation.

V

Plaintiff further alleges that the defendant owned, maintained and operated, as part of its line and system of railroad, its certain railroad tracks extending through Tennessee and Virginia, and in and near the said City of Frisco, Tennessee, it managed, controlled and operated its certain railroad yard consisting of divers railroad tracks and appurtenances, known as the Frisco Yard located partly [fol. 29] in the States of Tennessee and Virginia, over which it operated its trains in the furtherance of its interstate commerce business.

VI

That on the 25th day of November, 1946, plaintiff's intestate was working as a conductor on a certain train of the defendant, #65, consisting of an engine and 34 cars then and there being moved, hauled and used in interstate commerce and interstate transportation, and plaintiff's intestate and defendant were then and there engaged in interstate commerce and interstate transportation by railroad.

VII

That at the time of the occurrence complained of it was the duty of the plaintiff's intestate and the crew members of train #65 to set off a certain nine cars from said train #65 and locate them on a certain yard track in the Frisco Yard, Virginia; that in order to effect their purpose as aforesaid, it was necessary for said train #65 to pull across a certain trestle in said yard so that the main line switch could be cleared and lined up to permit the entrance

II

This Court Has Jurisdiction to Entertain Petitions for Extraordinary Remedial Writs and to Exercise Superintending Control over the Inferior Courts and Tribunals of This State and Should in This Matter, Because of Its Importance and General Interest, Exercise Said Jurisdiction

The Supreme Court of Missouri has original jurisdiction to entertain petitions for extraordinary remedial writs and to exercise superintending control over the inferior courts and tribunals in its jurisdiction, Missouri Constitution, 1945, Article V, Section 4, and this power has long been granted to the Supreme Court of Missouri. See Missouri Constitution, 1875, Article VI, Section 3, and 1884 Amendments, Article VI, Sections 8 and 12. This court has consistently held that the existence of concurrent jurisdiction to issue such remedial writs is in no wise a limitation upon the jurisdiction of this court to entertain such original petitions and to issue such remedial writs, and has further held that the practice of the Supreme Court in declining to issue such writs unless the case is one of more than ordinary importance is a rule of expediency and does not affect the jurisdiction of the court. State ex rel. v. Tracy, 94 Mo. 217; State ex rel. v. Dearing (Banc), 173 Mo. 492, l. c. 510; State ex rel. v. Grimm (Banc), 220 Mo. 483.

[fol. 10]

III

The Question of Law Presented by Respondent's Refusal to Entertain Jurisdiction Is of Great Importance to the Profession, the Public and the Courts and This Court Should Therefore Exercise Its Powers

The question of law involved in respondent's assertion that he is without jurisdiction to exercise his judicial discretion in ruling upon petitioner's said motion and that he is without jurisdiction to entertain the same is one of general interest and importance not only to the profession but to the courts, the public and the taxpayers as well as it affects the administration of the circuit courts. During recent years, many of these Federal Liability cases have been filed in the Circuit Court of the City of St. Louis, in which the plaintiffs and defendants are non-residents and

of the said nine cars into the yard track as aforesaid; that it was necessary, after said nine cars were set off, for said train #65 to proceed eastwardly so that the main line switch, as aforesaid, could be cleared to allow the switch to be thrown so that said train could re-cross said trestle, couple onto its caboose and proceed on its journey in interstate commerce; that at the time the rear end car of said train #65 had cleared the main line switch as aforesaid, the view to the rear from the locomotive and the leading cars on the front end of said train #65 was obscured by the curvature of the tracks and high banks then and there existing on either side of said yard at that point.

[fol. 30]

VIII

That plaintiff's intestate, as was his duty, had proceeded across the trestle as aforesaid with said train in order that the work of the defendant as aforesaid could be properly supervised and accomplished, and that as the engine of said train #65 reversed and proceeded to push said train #65 across said trestle to couple onto the caboose, the plaintiff's intestate attempted to remount said train #65 or a car of said train, located, to-wit: seven cars from the rear of said train, but the plaintiff's intestate's foot was caused to and did slip from the ladder of said car, causing him to be dangled and be dragged onto said trestle; that despite the frantic signals of the brakeman said train #65 failed to stop, causing the plaintiff's intestate to drop, fall and be thrown from the trestle a distance of, to-wit: forty (40) feet to the ground below causing him to sustain injuries from which he subsequently died.

IX

That at the time and place aforesaid, the defendant was guilty of one or more of the following acts of negligence:

(a) That it became and was the duty of the defendant to exercise ordinary care to provide the plaintiff's intestate with a reasonably safe place to work; but the defendant, notwithstanding its duty in this regard, failed to exercise ordinary care to provide plaintiff's intestate with a reasonably safe place to work and as a proximate result of the defendant's failure as aforesaid, the plaintiff's intestate sustained injuries from which he subsequently died.

in which the causes of action accrued in other states hundreds of families from St. Louis where the plaintiffs and all the witnesses reside. Many of such cases are now pending in said court and the number being filed is constantly increasing.* Not only are the particular litigants themselves put to great expense and inconvenience by the selection of such a forum, but the crowding of the trial docket with these cases materially affects the prompt trial of litigation between residents and the ability of the court to administer justice.** Due to the length of time this type of case usually requires in trial, the assessed costs therein are not sufficient to meet the actual expenses and, as a consequence, Missouri taxpayers must pay the dif- [fol. 11] ference resulting from this non-resident litigation, to say nothing about the general overhead expenses chargeable to such litigation.

IV

Mandamus Is the Proper and Appropriate Remedy to Compel Judges of Inferior Courts to Hear and Determine All Issues Properly Presented

Under the Constitutional provision, Missouri Constitution, 1945, Article V, Section 4 (and its corresponding provisions in the Missouri Constitution, 1875, as amended), providing for superintending control of inferior courts, it has been consistently held that mandamus is the proper and appropriate remedy to compel judges of inferior courts to hear and determine all issues properly presented, and it is the duty of this court to require judges of such inferior courts to exercise their full and whole jurisdiction. State ex rel. v. Brown, 330 Mo. 222, 48 S. W. (2d) 857, l. c.

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* One of the factors which will cause increased litigation of this type in the Circuit Court of the City of St. Louis is the amendment to the U. S. Judicial Code (Sec. 1404a), effective since September, which permits the Federal District Courts to transfer such cases to a more convenient district, and the recent sustaining by the Circuit Court of Cook County (Chicago) Illinois, of a motion to dismiss on the ground of forum non conveniens in a Federal Employers' Liability case.

** See Judge Francis Williams' suggestion in respect of criminal divisions.

859; State ex rel. v. Haid (Banc), 327 Mo. 567, l. c. 573-4; State ex rel. v. Trimble (Banc), 303 Mo. 284, l. c. 291; State ex rel. v. Ellison (Banc), 277 Mo. 46, l. c. 54. The fact that such inferior court has erroneously concluded that it is without jurisdiction is of no consequence and the superintending court will determine for itself from the record of the inferior court whether or not jurisdiction exists. State ex rel. — Trimble (Banc), 308 Mo. 278, l. c. 286-8; State ex rel. v. Trimble (Banc), 303 Mo. 284, l. c. 291; State ex rel. v. Ellison (Banc), 277 Mo. 46, l. c. 55.

V

Relator Has no Other Adequate Remedy

By reason of the nature of the ground of relator's motion to dismiss, relator has no other adequate remedy be- [fol. 12] cause the trial will ensue and the prospective injury to relator, the court, the taxpayers and the administration of justice will have become an accomplished fact.

VI

Respondent Possesses Jurisdiction to Rule on the Merits of Relator's Motion to Dismiss Cause No. 23161-D

A. A state court having concurrent jurisdiction with other state and federal courts of an action arising under an act of Congress may determine for itself whether its duty requires it to assume jurisdiction in an action between non-residents. Douglas v. New York and New Hampshire R. R. Co., 279 U. S. 377. The privilege of a non-resident to sue another non-resident on a cause of action arising in some other state in the courts of the State of Missouri at common law rested purely on the doctrine of comity, and the courts of this state were free and did in the exercise of discretion inherently vested in them decline to assume such jurisdiction or try such cases where sufficient reason appeared. Newlin v. The Railway Co., 222 Mo. 375, l. c. 391; State ex rel. v. Grimm, 239 Mo. 135, l. c. 180.

B. Missouri Revised Statutes Annotated, Sections 856 and 857 (former enactments—Missouri Revised Statutes, 1929, Sections 705-6; Missouri Revised Statutes, 1919, Sections 1162-3; Missouri Revised Statutes, 1909, Sections 1736 and 1737; Missouri Revised Statutes, 1899, Sections

547-8 [Section 548, Amended Laws for 1905, page 95]), opening the doors of our courts to non-residents for causes of action accruing in sister states are legislative declarations of the doctrine of comity, and comity in the legal sense is the granting of a privilege not a right in reason has its useful limitations. Newlin v. The Railway Co., [fol .13] 222 Mo. 375, l. c. 391: McGinnis v. Missouri Car & Foundry Co., 174 Mo. 225, l. c. 235. It is important at this juncture to point out that the amendment of 1905 relating to the recognition of the capacity of foreign administrators is the only portion of these statutes that is not a mere declaration of a pre-existing common-law doctrine. The importance of this distinction in the legislative history of the various portions of these statutes will appear later. The courts of Missouri and courts generally have held that comity, whether enforced by legislative declaration or not, has its useful limitations in reason and does not confer an inflexible right. Some such limitations are the inability of a local forum to do complete justice; the application of sound discretion as to convenience; the considerations of public policy; the enticement of jurisdiction from other states; the burdening of the functions of the essential capacity of the court with regard to the jurisdiction in which it exists, and others. See Gulf Oil Corporation v. Gilbert, 330 U. S. 501, 91 L. Ed. 1055, l. c. 1062-1063; State ex rel. v. State Board of Health, 61 S. W. (2d) 925, l. c. 927; Newlin v. The Railway Co., 222 Mo. 375; Ex parte Gounis, 304 Mo. 428, l. c. 442-3 Douglas v. New York & New Hampshire R. R. Co., 279 U. S. 377, and 15 C. J. S.—Courts—Section 118.

The application of this limiting doctrine, whether enforced by statutory enactment or merely in the exercise of the inherent power of the court is not repugnant to any provisions in the Federal Constitution. Douglas v. New York & New Hampshire R. R. Co., 279 U. S. 377. In this case there are valid substantial grounds on which the trial court in its discretion could have refused to retain jurisdiction. See Exhibit "B" attached to the petition.

C. Respondent erroneously ruled that he had no jurisdiction or discretion to entertain or rule upon the merits of [fol. 14] relator's motion to dismiss and in making said ruling erroneously relied upon certain language found in the case of Bright v. Wheelock, 20 S. W. (2d) 684, purporting to construe Section 1163 and 1180, Missouri Revised Stat-

XIII

That by reason of the facts alleged herein, plaintiff is entitled to recover damages on account of the conscious pain and suffering endured by plaintiff's intestate between the time of his injury and the time of his death, and also damages on account of the pecuniary loss suffered and sustained by the beneficiary and heir at law of the said intestate, in the sum of $100,000.00.

Wherefore, plaintiff prays judgment against the said defendant in the sum of $100,000.00 together with the costs and disbursements of this action.

Jerome Duggan, Wainwright Building, St. Louis, Missouri; Jos. B. McGlynn, 800 Spivey Building, East St. Louis, Illinois, Attorneys for Plaintiff.

Jury trial demanded by plaintiff.

[fol. 34] EXHIBIT B

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI

No. 23161-D. Division No. 1

LELIA M. BLEVINS, Administratrix of the Estate of Roderick E. Blevins, Deceased, Plaintiff,

vs.

SOUTHERN RAILWAY COMPANY, a Corporation, Defendant

MOTION TO DISMISS ON THE GROUND OF NON CONVENIENS

Now comes Southern Railway Company, defendant in the above-entitled cause, by its attorneys, and appearing specially in this cause for the sole purpose of making this motion, and for no other purpose, and moves the Court under the doctrine of "forum non conveniens" to dismiss, without prejudice, the above-entitled cause as vexatious, oppressive and an abuse of the process of this Court, and in support of this motion says:

1. That this is an action at law to recover alleged damages on account of the death of Roderick E. Blevins, and

utes, 1919, prior and subsequent enactments of which have been set out heretofore. The court stated under this authority that retention of jurisdiction was mandatory. The case of Bright v. Wheelock, supra, does not construe the statutes mentioned therein but simply refers to the cases of Wells v. Davis, 261 S. W. 58; State ex rel. Foraker v. Hoffman, 274 S. W. 362 and Shaw v. The Chicago & Alton R. R. Co., 314 Mo. 123, 282 S. W. 416. One other case, that of State ex rel. v. Grimm, 239 Mo. 135, requires discussion and for convenience they will be discussed in their chronological order.

The Grimm case, supra, decided that the statute providing for service on insurance companies which enabled the plaintiff administratrix of the estate of the deceased insured in that case to serve a foreign insurance company through the Insurance Commissioner at Jefferson City even though the policy was not written in this state was directly overruled on that point in the case of State ex rel. v. Landwehr, 318 Mo. 181. The Grimm case came before the court on prohibition but nevertheless the court in a purely obiter statement, which concerned solely a matter of judicial discretion on the part of the trial court and not a question of jurisdiction, misstates the effect of the Newlin case as to the mandatory nature of Section 547, Missouri Revised Statutes, 1899, and Section 548, as amended, 1905 Laws, page 95. The Newlin case clearly holds that these statutes are legislative declarations of the doctrine of comity and subject to limitations in the use of discretion. The Grimm case states that the Newlin case holds them to be mandatory. To reenforce its position in the obiter statement made in the Grimm case, the court [fol. 15] alludes to the requirements of the Federal Constitution, Article IV, Section 2, and the 14th Amendment to said Constitution, Section 1. That this interpretation of the Federal Constitution is without warrant will be seen by referring to the decision of the United States Supreme Court, the final arbiter of the question, in the case of Douglas v. New York & New Hampshire R. R. Co., 279 U. S. 377, which case is cited with approval in the recent case of Gulf Oil Co. v. Gilbert, 91 L. Ed. 1055, l. c. 1062. The misstatement of the effect and holding of the Newlin case is immediately apparent upon a comparison of the two cases and, of course, in any event the statement in the Grimm case is pure obiter.

this action is brought by Lelia M. Blevins, allegedly Administratrix of the Estate of Roderick E. Blevins, deceased, under an appointment of the County Court of Sullivan County, Tennessee. The action is allegedly brought under the Federal Employers' Liability Act, 45 U. S. C. A., Sections 51-60.

2. That the occurrence out of which this action allegedly grows arose in the Frisco Yard of the Southern Railway [fol. 35] Company, which Yard is located partly in the State of Tennessee and partly in the State of Virginia.

3. That at the time of the accident plaintiff resided in or about the City of Bristol, Tennessee, and as far as is known now so resides. The City of Bristol, Tennessee, is 690.7 miles from St. Louis, Missouri. The City of Appalachia, Virginia, is 760.7 miles from St. Louis, Missouri. In both the aforementioned Cities of Appalachia, Virginia, and Bristol, Tennessee, there are courts of general jurisdiction which do and would have jurisdiction of this cause, and both said courts are located within 100 miles of the place of residence of the plaintiff.

4. That at the trial of this cause, in order properly to present its defense, defendant, Southern Railway Company, will necessarily require the attendance and testimony of witnesses employed by it, including one trainmaster, one yardmaster, one engineer, one fireman, one flagman, one brakeman and two B & B men, and each of these witnesses resides either in Appalachia, Virginia, or Bristol, Tennessee. In addition to the foregoing witnesses the attendance of Dr. W. H. Reed, of Kingsport, Tennessee, will be required. It is estimated that in addition to the plaintiff, the plaintiff will require three witnesses. While the defendant believes that these employee-witnesses will be willing to come to St. Louis, Missouri, to testify in this case if the same is tried here, yet the cost of obtaining their attendance in this Court would greatly exceed the cost of obtaining their attendance at a trial of this case either in the Circuit Court in the State of Virginia, sitting in Appalachia, Virginia, or in the Circuit Court of the State of Tennessee, sitting in Bristol, Tennessee. Defendant is of the opinion that the extra cost of securing the attendance at St. Louis, Missouri, of such employee-witnesses would exceed the sum of $1,280.00, and that in addi-

The case of Wells v. Davis, supra, decided the point that a Missouri court must recognize the capacity of an Arkansas administratrix to sue in our courts. The question as to the convenience of the place of trial was not raised and, as a matter of fact, the defendant was a Missouri corporation, and the only error complained of was lack of capacity in the plaintiff to sue.

The case of State ex rel. Foraker v. Hoffman, 274 S. W. 362, decided that Section 1180 of the Missouri Revised Statutes, 1919, pertaining to service on a railroad company, was not unconstitutional as an undue burden on interstate commerce. Again the question of place of trial is not raised and again the defendant is a Missouri corporation. In that case, Section 1163 is not mentioned.

In the case of Shaw v. The Chicago & Alton R. R. Co., 314 Mo. 123, 282 S. W. 416, the defendant moved to dismiss the action in the trial court, but the motion is not set out in full. On appeal, the respondent set out as its assignment of error and Point 1, l. c. 125:

> "Respondent as administratrix, appointed under the laws of the State of Illinois, has no right or authority [fol. 16] to maintain this suit in Missouri and the trial court erred in not sustaining the motion to dismiss," citing cases.

The court quite properly rules that the inconvenience occasioned does not distinguish this case from the Wells case insofar as the plaintiff's capacity to sue goes and refers specifically to Section 1163 of the Missouri Revised Statutes, 1919, as determining the matter of capacity and states that the motion was properly overruled. In that case, there was no appellate question of the discretion of the trial court to rule on the ground of forum non conveniens as such point was not assigned as error. The appellate issue which was decided was limited to the holding that a foreign administratrix had legal capacity to sue in this state. From this discussion of the Wells, Foraker and Shaw cases, on which the language in the Bright case is based, it is readily apparent that they are not support for that language.

In the Bright case, plaintiff appealed from an order of the trial court in granting a new trial. The trial court based its order for new trial on the following grounds:

> "(1) In giving instruction No. 5 for plaintiff;

tion to this expense on the defendant's part, a similar addi-
[fol. 36] tional expense to the plaintiff in an estimated amount of $200.00 will accrue.

5. That the trial of this cause will consume approximately four days. The testimony of Dr. W. H. Reed, of Kingsport, Tennessee, will be required, and if the Doctor is willing to come to St. Louis his practice will be interrupted, as a result of this action being tried here, for a period of six days, whereas, were this cause tried either at Appalachia, Virginia, or at Bristol, Tennessee, or in the Federal Courts sitting in those areas, no more than one day loss of time by the Doctor would accrue.

6. That in addition defendant expects to have two, or possibly three, witnesses well acquainted with the site of the accident at approximately the same time of the year the accident happened, to determine the physical nature of the scene of the accident. Such witnesses will reside in or near the City of Frisco, Tennessee, and within 100 miles of Bristol, Tennessee, or Appalachia, Virginia.

7. As far as defendant is advised, all of plaintiff's possible witnesses upon the trial of this cause reside in the States of Tennessee or Virginia and within 75 miles of the City of Frisco, Tennessee.

8. It is possible, and in fact probable, that upon the trial of this cause it might become proper and material for the jury to view the premises, namely, the trestle mentioned in plaintiff's petition. Such view could not possibly be made by the jury if this cause were tried in this Court.

9. That there is ample time remaining for plaintiff to bring this action in the States of Virginia or Tennessee, or in the Federal Courts sitting in the area surrounding the City of Frisco, Tennessee, on account of her alleged cause of action; and if this motion is allowed and this cause dismissed, without prejudice, plaintiff will not be deprived [fol. 37] of her rights or barred to maintain her suit in the aforementioned jurisdictions.

10. Wherefore, on account of the matters and things hereinabove alleged and set forth, this defendant says that to try this case in the Circuit Court of the City of St. Louis, Missouri, would be vexatious, oppressive and an abuse of the process of this Court; and that under the

"(2) In refusing No. 12 for defendant;

"(3) Because of prejudicial error in opening statement of plaintiff's counsel and also improper cross-examination of said witness Utt in reference to said pictures;

and defendant's motion in arrest of judgment is overruled and defendants except thereto."

The court, after reviewing the record and the pertinent facts in the transcript, rules:

(1) That the cross-examination of Utt in reference to the pictures was error and that the determination of the [fol. 17] trial court that this error was prejudicial will not be disturbed, and disposes of the appeal on that basis. Having thus disposed of the case, the court then states:

"Since this cause must be remanded for a retrial for the reasons stated in paragraph I of this opinion, it may be well for us to discuss, somewhat briefly, the two other grounds, or reasons, upon which the trial court predicated the order granting a new trial. One of such grounds was that the court erred in giving, at the request of plaintiff, instruction No. 5,"

and properly states that the giving of instruction No. 5 was not error in that the matter there set out did not constitute a defense. Instruction No. 5 seemingly recited:

"The court instructs the jury that if you find that the defendants at the time and place in question were engaged in commerce between states as defined in instruction No. 1, then the plaintiff had the right to bring and prosecute this suit in this county and state and the fact that the Chicago & Alton Railroad Company is incorporated in Illinois, or that the plaintiff and defendants are residents of that state, or that the injury occurred there, or that plaintiff might have sued in the courts of that state, does not constitute a defense to this cause of action."

The court then states another ground, 20 S. W. (2d) 700:

"Another ground upon which the trial court predicated the order granting a new trial is that the court

doctrine of "forum non conveniens," this action ought to be by this Court dismissed, without prejudice, so that plaintiff, if she so desires, may prosecute her alleged cause of action either in the Circuit Court of the State of Tennessee, sitting at Bristol, Tennessee, or in the Circuit Court of the State of Virginia, sitting at Appalachia, Virginia, or in the United States District Court located in that area.

Summarizing the reasons therefor and the rules of law applicable thereto, in view of the foregoing facts, defendant says:

(a) The relative ease and availability of access to the plaintiff in either the courts of Virginia or Tennessee or the Federal Court as compared to this Court.

(b) The availability of process to secure the personal attendance of witnesses upon the trial and the avoidance of taking depositions.

(c) The relative cost of obtaining attendance of willing witnesses and the difficulty, and perhaps inability, of obtaining the attendance of unwilling witnesses residing in other States.

(d) The possibility of a view of the premises.

(e) The administrative difficulties arising by the piling up of litigation in congested areas, of which the Court will take judicial notice.

(f) Avoidance of problems of conflict of laws.

[fol. 38] (g) The other practical problems as indicated in the facts set forth, so as to make the trial of this cause as easily expeditious and inexpensive as possible.

All of which is respectfully submitted and prayed.

Southern Railway Company, by Kramer, Campbell, Costello & Wiechert, Bruce A. Campbell, 606-618 First National Bank Building, East St. Louis, Illinois, By Fordyce, White, Mayne, Williams & Hartman, F. W. Schwarz, 506 Olive Street, St. Louis, Missouri, Attorneys for Defendant.

> erred in refusing to give instruction No. 12, requested by defendants. The instruction reads: 'The court instructs the jury that if they believe from the evidence plaintiff, Bright, stepped from the step of the pilot of the engine upon the ground, the court further instructs you that it was the duty of brakeman Bright to watch out where he was stepping and be careful in [fol. 18] stepping off the step, and the court further instructs you that if they believe from the evidence plaintiff was negligent in stepping off the step onto the ground, and by reason thereof fell and was struck by the cars, then your verdict must be in favor of the defendants,' "

and holds that the refusal of instruction No. 12 was not error. After making these determinations, the court states:

> "Respondents urge that the order granting a new trial is sustainable upon other grounds, assigned in defendants' motion for new trial, but not specified by the trial court in the order granting a new trial. It is unnecessary to discuss such matters, inasmuch as the order granting a new trial must be affirmed upon the ground, and for the reasons, stated in paragraph I hereof."

This case did not pretend to decide the question of discretion of the trial court to retain or refuse the jurisdiction on the ground of forum non conveniens and statements regarding that matter are clearly obiter dictum. But even were this not so, the court did not make any effort to construe sections 1163 and 1180 of the Missouri Revised Statutes 1919 (present enactments, Missouri Revised Statutes Annotated, Sections 856-7), but after recognizing that there was no constitutional basis to require that assumption, in view of the Douglas case, supra, and that New York had construed similar sections of their statutes to invest a court with such discretion, simply states:

> "Our previous rulings announced in the Shaw, Wells and Foraker cases appear to be to the effect that the statutes, supra (1163 and 1180), do not invest the courts of our state with such discretion and we see no good or sufficient reason for overruling at this time our prior decisions construing such statutes."

[fol. 19] Section 1180 was not in this case and, in any event, the court recognizes that it was not ruling on or construing these statutes and that there was no occasion or reason to do so. The court also seems to realize that the removal by the United States Supreme Court decision in the Douglas case, supra, of the Constitutional basis for language postulating mandatory retention of jurisdiction under these statutes (language which was originated in the Grimm case) left the answer to this serious question in a state of doubt. This doubt has not since been resolved by this court. From the discussion heretofore had of the Wells, Shaw and Foraker cases, it is clear that there has been no such interpretation of these statutes in those cases. The fundamental cases of McGinnis v. Missouri Car & Foundry Co., 174 Mo. 225, l. c. 235, and Newlin v. The Railway Co., 220 Mo. 375, l. c. 291, clearly hold that these statutes (except the 1905 amendment) are legislative declarations of comity and subject to the discretionary limits of that doctrine.

VII

Under the Normal Well Recognized and Proper Rules of Statutory Construction, Missouri Revised Statutes Annotated, Sections 856-7, Opening the Doors of This State to Causes of Action Arising in Other Jurisdictions Should Be Construed to Vest the Trial Court With Discretion on the Question of Retaining and Exercising Its Jurisdiction

The legislative history of Sections 856-7, insofar as it is material, is set out in the table below:

Missouri Revised Statutes Ann., Secs. 856-7;
Missouri Revised Statutes, 1929, Secs. 705-6;
Missouri Revised Statutes, 1919, Secs. 1162-3;
Missouri Revised Statutes, 1909, Secs. 1736-7;
[fol. 20] Amendment to Sec. 548, Mo. R. S., 1899, by Laws 1905, page 95;
Missouri Revised Statutes, 1899, Secs. 547-8;
Original Enactment Laws, 1891, page 68.

It will be noted that the only change in these sections throughout their history is the amendment of 1905, and it was through that amendment that Missouri courts were compelled to recognize the capacity of foreign adminis-

trators, guardians, etc., in order to fill the hiatus left by the decision in McGinnis v. Missouri Car & Foundry Co., 174 Mo. 225. The remaining provisions of these two sections are mere legislative declarations of the doctrine of comity as was the original Section 547, Missouri Revised Statutes, 1899, and the portion of Section 548, exclusive of the capacity provision. It has been so held in the case of Newlin v. The Railway Co. and McGinnis v. Missouri Car & Foundry Co., supra.

This statute, Section 548, Missouri Revised Statutes, 1899, was amended as the result of the McGinnis case, supra. In that case a party appointed by a circuit court in accordance with the then existing section, sought to enforce a death action occurring in the State of Illinois, and the court held that inasmuch as the statute conferring an action for wrongful death designated the party to enforce the right, the Missouri Legislature was without power to make a different designation and held that insofar as the statute attempted that it was void. The court then recommended the amendment of the statute which was subsequently made in 1905 and used the following language, 174 Mo. 225, l. c. 235:

> "For these reasons it is clear that the plaintiff has no legal capacity to maintain this action, and that Section 548, Revised Statutes, 1899, is void and without legal force.
>
> [fol. 21] "It would have been within the power of the Legislature, however, to confer express power upon the Illinois administrator to maintain an action, based upon the statute of the State quoted, in the courts of this State, for that would be a mere matter of State comity and not the creation of a new liability and right."

It will clearly be seen from this statement by the Supreme Court of Missouri in the McGinnis case that, with the exception of the existence of capacity, the right of foreign persons to maintain actions in our courts is purely on a comity basis and subject to the reasonable limitations thereof.

The Shaw and Wells cases, even in their obiter statements, only deal with this modification and clearly a distinc-

tion in construing these statutes should be made between the provisions which are mere declarations of a preexisting policy and those provisions which change that policy. As a matter of fact, with the exception of the Newlin case, supra, which held that the application of foreign law was a matter subject to discretionary limitations, the Missouri courts have never construed any portion of these statutes except that requiring the recognition of foreign administrators.

There Is No Need for Legislative Action

All cases dealing with other legislative declarations of comity have consistently held that the doctrine is subject to the discretion of the body charged with its enforcement. See State ex rel, v. State Board of Health, supra. This rule of statutory construction, taken together with the decisions of our sister states in application of the doctrine of comity in similar situations, makes this conclusion obvious. Every [fol. 22] jurisdiction in which we have been able to discover rulings on the matter, save only Minnesota, treated hereafter, has held that the court has inherent power to determine for itself whether it should assume jurisdiction between nonresidents and that this power is uncontestably necessary to the effective performance of judicial functions. Some of the cases in these jurisdictions are:

New York—Murnan v. Wabash R. R. Co., 264 N. Y. 244, 158 N. E. 508; Douglas v. N. Y. & N. H. R. R. Co., 279 U. S. 377;

Illinois—Whitney v. Madden (1948), 400 Ill. 185, 79 N. E. (2d) 593;

Massachusetts—Universal Adj. Corp. v. Bank (1933), 184 N. E. 152; Bethlehem Fab., Inc., v. Watts, 286 Mass. 556, 190 N. E. 829; Lydia Pinkham Med. Co. v. Gove (1937), 298 Mass. 53, 9 N. E. (2d) 573; Pinson v. Potter (1937), 298 Mass. 109, 10 N. E. (2d) 136;

California—Leet v. H. P. R. Co., 155 P. (2d) 42;

New Jersey—Kantakevitch v. Delaware, L. & W. R. Co., 18 N. J. Misc. 77, 10 Atl. (2d) 651 (1940); Standard S. & C. Co. N. Y. v. Cagavel Indust. Corp., 128 N. J. Eq. 104, 15 Atl. (2d) 258 (1940); Anderson v. Delaware, L. & W. R. Co., 18 N. J. Misc. 153, 11 Atl. (2d) 607; James H. Rhodes & Co. v. Chausovsky, 137 N. J. L. 459, 60 Atl. (2d) 623 (1948);

VIII

Conclusion

Although this question has now become one of general interest and importance to the judiciary and bar and also to the public at large due to its effect on the administration of our courts, this court as heretofore shown has not as yet given the matter the studied consideration it merits in any case where its determination was a live appellate issue.

The doctrine of forum non conveniens as heretofore shown has been recognized in such states as New York, Massachusetts, Illinois, Florida, New Jersey, California, New Hampshire, Wisconsin, Louisiana, Pennsylvania, Texas and England. It has also been recognized by the Supreme Court of the United States, and the same court has also ruled that in a Federal Employers' Liability Act case a state court may use its discretionary powers in determining whether to retain jurisdiction, where the litigants are non-residents, without violation to the Federal Constitution.

Considering the foregoing discussion, we believe that this court should order respondent to exercise the discretion which he possesses and rule on the merits of relator's [fol. 26] motion to dismiss cause No. 23161-D, now pending in the Circuit Court of the City of St. Louis.

Respectfully submitted, Kramer, Campbell, Costello & Wiechert, East St. Louis, Illinois, Fordyce, White, Mayne, Williams & Hartman, By Thomas Rowe Schwarz, F. W. Schwarz, St. Louis, Missouri, Attorneys for Relator.

[fol. 27] EXHIBIT A

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI

Cause No. 23161-D. Division No. 1

LELIA M. BLEVINS, Administratrix of the Estate of Roderick E. Blevins, Deceased, Plaintiff,

vs.

SOUTHERN RAILWAY COMPANY, a Corporation, 721 Olive Street, St. Louis, Missouri, Defendant

Complaint

Plaintiff, for her cause of action against the above named defendant, complains and alleges:

I

That the jurisdiction of the above named Court is based upon the Federal Employers' Liability Act, being an Act of the Congress of the United States, 45 U. S. C. A., Sections 51-60, as hereinafter more fully appears.

II

That at all times herein material, the plaintiff was and now is the duly appointed and legally acting administratrix of the Estate of Roderick E. Blevins, deceased, having been appointed as such administratrix on the 26th day of February, 1947, by the County Court of Sullivan County, Tennessee, a court of suitable and competent jurisdiction.

[fol. 28] III

That at all times herein mentioned, the defendant, Southern Railway Company, a corporation, was being controlled and being operated and managed in interstate commerce transporting interstate commerce between various of the States of the Union, including the States of Virginia, Tennessee and Missouri, and operated its line of railroad through the States of Virginia and Tennessee and into the State of Missouri and into the City of St. Louis, within the jurisdiction of the Circuit Court of the City of St. Louis, Missouri, and the plaintiff's intestate then in his lifetime,

(b) That it became and was the duty of the defendant to establish by rule, custom or practice, a proper, safe and co-ordinated method of switching, moving and hauling cars in said Frisco Yard, but notwith-[fol. 31] standing its duty and obligation in this regard, the defendant negligently, carelessly, wrongfully and unlawfully failed to establish by rule, custom or practice a proper, safe and co-ordinated method of switching, moving or hauling cars in said yard, but permitted said train #65 to be switched, moved and hauled without signal or without maintaining any contact, visual or otherwise, between the crew member in the engine of train #65 and the crew member working on or about the rear end of said train #65.

(c) That it came and was the duty of the defendant, through its servants and agents, in particular the fireman, to keep a constant and vigilant lookout in the direction in which train #65 was proceeding, but the defendant, through its servants and agents, and in particular the fireman, notwithstanding its duty and obligation in this regard negligently, carelessly, wrongfully and unlawfully failed to keep a constant and vigilant lookout in the direction in which said train #65 was proceeding and as a direct and proximate result thereof, the plaintiff's intestate sustained the injuries from which he subsequently died.

(d) That it became and was the duty of the defendant, through its engineer, to stop said train #65 when it knew, or by the exercise of ordinary care should have known, that the plaintiff's intestate was dangling helplessly from said car as aforesaid, and being dragged onto said trestle, but the defendant, notwithstanding its duty and obligation in this regard did through its engineer negligently, carelessly and wrongfully, and unlawfully fail to stop said train #65 when it knew, or in the exercise of reasonable care should have known, that the plaintiff's intestate was dangling helplessly from said car as aforesaid and being dragged onto said trestle and as a direct and proximate result of the de-[fol. 32] fendant's negligent conduct, the plaintiff's intestate was dragged a distance, of to-wit: two hundred (200) feet and was caused to be thrown and hurled

from said trestle to the ground below, sustaining injuries from which he subsequently died.

(e) That it became and was the duty of the defendant, through its servants and agents the engineer and fireman of train #65, to observe, heed and obey all signals relayed to it by the train crew, of said train #65, but notwithstanding its duty and obligation in this regard, the defendant, through its engineer and fireman, negligently, carelessly, wrongfully and unlawfully failed to observe, heed and obey the signal of the brakeman of said train who was then and there giving a violent stop signal, and as a direct and proximate result of said failure, the plaintiff's intestate sustained the injuries from which he subsequently died.

X

That as a direct and proximate result of one or more of the aforesaid negligent acts of the defendant as aforesaid, plaintiff's intestate sustained injuries resulting in his death on November 25, 1946.

XI

Plaintiff alleges that between the time the plaintiff's intestate was injured and the time he died as a direct result of said injuries, plaintiff's intestate suffered excruciating conscious bodily and mental pain and suffering, and on account thereof, plaintiff is entitled to recover damages for conscious pain and suffering sustained by plaintiff's intestate for the benefit of his heirs at law and his beneficiaries.

[fol. 33]

XII

Plaintiff alleges that prior to the occurrence herein mentioned above, plaintiff's intestate was a strong, healthy, able-bodied man, fifty-eight (58) years of age, and that he was earning and capable of earning large sums of money, to-wit: $325.00 per month; that he left surviving him as his sole heir at law and beneficiary, Lelia M. Blevins, his widow, who was dependent upon him for support; that by reason of the untimely death of plaintiff's intestate, this plaintiff is entitled to recover the damages and pecuniary loss suffered and sustained by the heir at law and beneficiary of plaintiff's intestate.

[fol. 39] EXHIBIT C

IN THE CIRCUIT COURT, CITY OF ST. LOUIS

LELIA M. BLEVINS, Administratrix, etc.,

v.

SOUTHERN RAILWAY COMPANY, a corporation

No. 23161-D. Room #1. March 14th, 1949.

Memorandum for Clerk.

Defendant's motion to dismiss on the ground of forum non conveniens denied upon the sole ground that in the opinion of the Court the Court has no jurisdiction or discretion to entertain or grant such a motion. Court's memo filed.

William L. Mason, Judge.

[fol. 40] EXHIBIT D

STATE OF MISSOURI,
City of St. Louis, ss.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI

No. 23161-D

LELIA M. BLEVINS, Administratrix of the Estate of Roderick E. Blevins, Deceased, Plaintiff,

v.

SOUTHERN RAILWAY COMPANY, a corporation, Defendant

Memorandum of Court

We have carefully considered the authorities set out in the extensive and able brief of learned counsel for the defendant but are of the opinion that our Supreme Court has announced in no uncertain terms that we have no discretion to dismiss a case merely on the ground of inconvenience and on the ground that such cases clog our dockets and burden the court with litigation that should have been

brought elsewhere to the detriment of our local litigants and at the expense of our taxpayers. Such consideration might well appeal to the legislature to vest our trial courts with such discretion, but in the opinion of our Supreme Court our legislature has not done so by any statute heretofore enacted but, on the contrary, has placed upon our courts the burden of taking jurisdiction in Federal Em- [fol. 41] ployers Liability cases wherever the cause of action may have accrued and wherever the parties and witnesses may reside. Our Supreme Court stated, as set out in the very frank brief of the defendant, quoting from the case of Bright v. Wheelock, 20 S. W. (2d) 684, as follows:

> "* * * However, our own court has not construed the (somewhat similar) statutes of this state (sections 1163 and 1180, R. S. 1919) to invest the courts of this state with the discretion to refuse to entertain jurisdiction of such a suit. Our previous rulings, as announced in the Shaw, Wells, and Foraker cases, supra, appear to be to the effect that our statutes, supra, do not invest the courts of our state with such discretion, and we see no good or sufficient reason for overruling, at this time, our prior decisions construing such statutes. It would seem to us that the correction of the evil (herein complained of by respondents), if there be any evil, lies with the legislature rather than with the judiciary. The giving of plaintiff's instruction No. 5 was proper under the law as announced by this court in the cases, supra, and was not error, and hence the trial court erred in predicating the order, granting a new trial, upon the specified ground of 'error in giving instruction No. 5 for plaintiff.'"

Instruction No. 5 was as follows:

> "The court instructs the jury that if you find that the defendants at the time and place in question were engaged in commerce between states as defined in instruction No. 1, then the plaintiff had the right to bring and prosecute this suit in this county and state and the fact that the Chicago & Alton Railroad Company is incorporated in Illinois, or that the plaintiff and defendants are residents of that state, or that the injury occurred there, or that plaintiff might have

[fol. 42] sued in the courts of that state, does not constitute a defense to this cause of action."

Learned counsel for defendant argue quite persuasively that this is dictum and not decision of the Court. We do not so interpret it and do not regard ourselves as having any right to disregard it.

If counsel for defendant consider it desirable to get a prompt ruling upon the correctness of our decision, we suggest that we see no reason why a mandamus proceeding against us to compel us to take the jurisdiction now invoked would not accomplish that purpose.

William L. Mason, Judge.

[fol. 43] In Supreme Court of Missouri

[Title omitted]

41461

Order—April 11, 1949

Now at this day, on consideration of the petition for a writ of mandamus, the court doth order that an alternative writ of mandamus issue herein, as prayed, directed to the said respondent, said writ to be returnable in thirty days to the court en banc.

In the Supreme Court of Missouri

41461

[Title omitted]

Alternative Writ of Mandamus

The State of Missouri:

To William L. Mason, Judge of the Circuit Court of the City of St. Louis presiding in Division No. One, Greeting:

Whereas, it has been represented to the Supreme Court of the State of Missouri, on the part of relator, Southern Railway Company, a corporation, as indicated and set forth

The Bright case, supra, came to the Court on plaintiff's appeal from the trial Court's order granting defendant a new trial. The Court, in paragraph I of the opinion, sustained the trial Court's order on the ground that certain cross-examination was prejudicial error. Paragraph II of the opinion began thus:

> "Since this cause must be remanded for a retrial for the reasons stated in paragraph I of this opinion, it may be well for us to discuss, somewhat briefly, the two other grounds, or reasons, upon which the trial court predicated the order granting a new trial. One of such grounds was that the court erred in giving, at the request of plaintiff, instruction No. 5, which [fol. 67] reads: 'The court instructs the jury that if you find that the defendants at the time and place in question were engaged in commerce between states as defined in instruction No. 1, then the plaintiff had the right to bring and prosecute this suit in this county and state and the fact that the Chicago & Alton Railroad Company is incorporated in Illinois, or that the plaintiff and defendants are residents of that state, or that the injury occurred there, or that plaintiff might have sued in the courts of that state, does not constitute a defense to this cause of action.' " l. c. 698.

This instruction was held proper. In its discussion, the Court took note of the holding of the United States Supreme Court in the Douglas case and stated:

> "* * * However, our own court has not construed the (somewhat similar) statutes of this state (sections 1163 and 1180, Rev. St. 1919) to invest the courts of this state with the discretion to refuse to entertain jurisdiction of such a suit. Our previous rulings, as announced in the Shaw, Wells and Foraker Cases, supra, appear to be to the effect that the statutes, supra, do not invest the courts of our state with such discretion, and we see no good or sufficient reason for overruling, at this time, our prior decisions construing such statutes * * *", l. c. 700.

In paragraph III the Court said:

> "Respondents urge that the order granting a new trial is sustainable upon other grounds, assigned in

in a certain petition for a writ of mandamus, a copy of which is hereto attached and made a part hereof:

Now, Therefore, we being willing that due and speedy justice be done the said petitioner, in this behalf, Command you, the said William L. Mason, as Judge of the Circuit Court of the City of St. Louis, to set aside your order of March 14, 1949, in a cause entitled Lelia M. Blevins, administratrix of the estate of Roderick E. Blevins, deceased, plaintiff, versus Southern Railway Company, a corporation, defendant, No. 23,161-D, and to exercise your proper jurisdiction and to determine on the merits the issues presented by defendant's motion to dismiss, or that you show cause, if any you have, before the Supreme Court of the State of Missouri, en banc, on or before the 11th day of May, 1949, why you should not do so.

[fol. 44] Herein fail not at your peril.

In Testimony Whereof, I have hereto set my hand and affixed the seal of said court at my office in the City of Jefferson this 12th day of April, 1949.

Marion Spicer, Clerk, Supreme Court. (Seal.)

And thereafter and on the 11th day of May, 1919, there was filed in said cause respondent's return to said Alternative writ, which Return is in words and figures following, to-wit:

IN THE SUPREME COURT OF MISSOURI

No. 41461

[Title omitted]

RETURN TO ALTERNATIVE WRIT OF MANDAMUS—Filed May 11, 1949

Comes now William L. Mason, Judge of the Circuit Court of the City of St. Louis, Missouri, Respondent above named, and, for his return to the alternative writ of mandamus issued herein:

1. Admits the allegations of paragraphs numbered 1, 2, 3, 4, 5, 6, 7 and 8 of Relator's petition for writ of mandamus herein.

2. Admits the allegations of paragraph numbered 9 of Relator's petition for writ of mandamus to the effect that

defendants' motion for new trial, but not specified by the trial court in the order granting a new trial. It is unnecessary to discuss such matters, inasmuch as the order granting a new trial must be affirmed upon the ground, and for the reasons, stated in paragraph I hereof." l. c. 700.

[fol. 68] The discussions in paragraphs II and III in the Bright case manifestly are unnecessary to the determination of the appeal. The Court clearly states that the remand is made because of the improper cross-examination.

Thus, in none of these cases has the Court had before it on appeal the question of the power of a trial Court to apply the doctrine of forum non conveniens. Decisions on the capacity of a plaintiff to sue or the jurisdiction of the selected Court are not in point. In order to make a judicial decision binding, under the rule of stare decisis in a subsequent case, "there must have been an application of the judicial mind to the precise question necessary to be determined to fix the rights of the parties and decide" the point "in contestation". Carroll v. Carroll, 16 Howard 275, 287, 14 L. Ed. 936. Respondent, therefore, was not precluded by case law from hearing relator's motion on the merits.

D. Sections 856-7, Missouri Revised Statutes Annotated, do not purport to divest respondent of the power to entertain relator's motion.

Relator contends that the Legislature has not the power to take from a Missouri Court the fundamental right to apply the principles of forum non conveniens in a proper case. It is submitted, however, that the Legislature has made no attempt to do so. Sections 856-7, Mo. R. S. A., are merely legislative declarations of comity. Newlin v. Railway Co., 222 Mo. 375, 121 S. W. 125; McGinnis v. Missouri Car & Foundry Co., 174 Mo. 225, 73 S. W. 586. As late as 1933 this Court quoted with approval from the Newlin case:

> "In this connection we observe: Our statutes • • • opening the doors of our courts to causes of action accruing under laws of our sister states, are legislative declarations of comity. Comity, in a legal sense, is [fol. 69] complaisance, courtesy, the granting of a

respondent, has, by his order of March 14, 1949, refused to rule upon the merits of Relator's motion to dismiss, duly filed in said Cause No. 23161-D in the Circuit Court of the City of St. Louis, Missouri; and denies each and every other allegation of said paragraph of said petition.

3. Admits the allegations of paragraph numbered 10 of Relator's petition for a writ of mandamus to the effect that there are now pending in said Circuit Court numerous actions involving similar circumstances, and others are con- [fol. 45] tinually being filed, but denies each and every other allegation of said paragraph of said petition.

4. Denies the allegations of paragraph numbered 11 of Relator's petition for writ of mandamus herein.

For further return to the alternative writ of mandamus, this Respondent states and avers that:

I. Relator, Southern Railway Company, is a corporation engaged and engaging in the business of owning and operating a line and system of railroad as a common carrier, transporting freight and pasengers for hire, in interstate and intrastate commerce.

II. Relator, Southern Railway Company, maintains and operates in the City of St. Louis, Missouri, offices for the transaction of its business, designated as "General Offices," and daily operates trains into and out of said City of St. Louis, Missouri, in interstate commerce and transportation.

III. On or about the 13th day of October, 1948, there was filed in the Circuit Court of the City of St. Louis, Missouri, a petition in an action in which Lelia M. Blevins, administratrix of the estate of Roderick E. Blevins, deceased, was designated as plaintiff, and in which Relator here, Southern Railway Company, was designated as defendant, wherein the plaintiff sought damages against defendant in the sum of $100,000.00. In said petition, it was averred that the action was brought under the Federal Employer's Liability Act (45 USCA Secs. 51-60) to recover damages for the death of plaintiff's decedent, which allegedly resulted from negligence of the defendant (Relator here) in a train movement in a railroad yard of defendant (Relator here), known as the "Frisco Yard" and located partly in the State of Tennessee and partly in the State of Virginia, while

plaintiff's decedent was engaged in interstate commerce and transportation in the course and scope of his employment by defendant (Relator here) as a train conductor. Said petition, and the action founded thereon, were and are [fol. 46] numbered in said Circuit Court of the City of St. Louis, Missouri, as No. 23161-D. A copy of said petition in said cause No. 23161-D is attached to Relator's petition herein as Exhibit A thereto, and is here incorporated by reference.

IV. Summons was duly issued for defendant (Relator here) in said cause in said Circuit Court of the City of St. Louis, Missouri, and was, on October 15, 1948, duly served upon the defendant in said cause (Relator here).

V. On or about November 15, 1948, defendant in said cause in said circuit court (Relator here) duly filed in said cause its motion to dismiss said cause entitled "Motion to Dismiss on the Ground of Non Conveniens," a copy of which motion is attached to Relator's petition herein as Exhibit B thereto and is here incorporated by reference. Said motion sought to have said action in said Circuit Court of the City of St. Louis, Missouri, dismissed under the doctrine of "forum non conveniens", it being averred therein substantially that: (1) The plaintiff in said action, at the time the cause of action therein accrued, and now, resides in or near the City of Bristol, Tennessee, which is located about 691 miles from the City of St. Louis, Missouri; (2) the City of Appalachia, Virginia, is within 100 miles of Bristol, Tennessee, and is about 761 miles from the City of St. Louis, Missouri; (3) that in both cities of Bristol, Tennessee, and Appalachia, Virginia, there are courts of general jurisdiction having jurisdiction over causes of action as that alleged in said petition in said cause in the said Circuit Court of the City of St. Louis; (4) that at the trial of said cause in said Circuit Court of the City of St. Louis, Missouri, defendant therein (Relator here) will require the attendance and testimony of eight of its employees who reside in Bristol, Tennessee, or Appalachia, Virginia, and a doctor who resides in Kingsport, Tennessee, and plaintiff therein will require the attendance and testimony of three witnesses who reside [fol. 47] within 100 miles of Bristol, Tennessee, and Appalachia, Virginia; (5) the cost of securing the attendance of such witnesses for defendant (relator here) at St. Louis,

Missouri, would exceed $1,280.00 and would greatly exceed the cost of securing their attendance at either Bristol, Tennessee, or Appalachia, Virginia; (6) the trial of said cause will require approximately four days, and if the doctor mentioned will attend the trial at St. Louis, Missouri, his practice will be interrupted for six days, while it would be interrupted for only one day if the trial were held at either Bristol, Tennessee, or Appalachia, Virginia; (7) it is possible, and, in fact, probable, that at a trial of said cause it might be proper and material for the jury to view the premises where the fatal injuries to plaintiff's decedent occurred, which would be impossible if plaintiff's said cause were tried in the City of St. Louis, Missouri; (8) and there is ample time remaining within which plaintiff in said cause may file a petition in the States of Virginia or Tennessee on her cause of action, so that, if her action in the Circuit Court of the City of St. Louis be dismissed, without prejudice, she would not be deprived of her rights nor barred from maintaining suit in the States of Virginia or Tennessee.

VI. On the 11th day of February, 1949, said motion to dismiss was presented, argued and submitted in Division No. 1 in said Circuit Court of the City of St. Louis, Missouri, to this Respondent as Judge of said Court, and, thereafter, in due course, parties to said cause submitted to this Respondent, for his consideration, their respective memorandum briefs.

VII. On the 14th day of March, 1949, this Respondent, as Judge of said Division of said Circuit Court of the City of St. Louis, Missouri, entered an order in said cause in said Court, ruling on said motion to dismiss, in words and figures as follows, to wit:

> [fol. 48] "Defendant's motion to dismiss upon the ground of forum non conveniens denied upon the sole ground that in the opinion of the Court, the Court has no jurisdiction or discretion to entertain or grant such a motion. Court's memo filed."

And this Respondent then and there filed a memorandum in said cause setting out some of the reasons which induced him to so rule on said motion, a copy of which said memorandum is attached to Relator's petition herein as Exhibit D thereto and which is here incorporated by reference.

VIII. Said Circuit Court of the City of St. Louis, Missouri, is a court of general jurisdiction, has had at all times since October 14, 1948, full and complete jurisdiction of the subject matter of said Cause No. 23161-D therein, and has had at all times since November 15, 1948, and now has, full and complete jurisdiction of and over the parties to said cause.

IX. The existence of jurisdiction in said Circuit Court of the City of St. Louis, Missouri, of and over both the subject matter of and the parties to said cause of action numbered 23161-D creates an implication of a duty to exercise such jurisdiction, and that the exercise of such jurisdiction may be onerous does not militate against that implication.

X. Under the applicable statutes, and the controlling decisions of the Supreme Court of the State of Missouri, and of the United States of America, and under the applicable provisions of the constitutions of the State of Missouri and the United States of America, the said Circuit Court of the City of St. Louis, Missouri, and this Respondent as one of the judges thereof, were and are without jurisdiction or discretion to entertain the said motion to dismiss filed by defendant in the said cause No. 23161-D in said Circuit Court (Relator here).

[fol. 49] Wherefore, having fully made return to the alternative writ of mandamus, Respondent prays that said alternative writ of mandamus be quashed.

Jos. B. McGlynn, Spivey Building, East St. Louis, Illinois. Jerome F. Duggan, 706 Chestnut Street, St. Louis, Missouri. Roberts P. Elam, 892 Arcade Building, St. Louis, Missouri, Attorneys for William L. Mason, Judge of the Circuit Court of the City of St. Louis, Missouri, and his successors, as presiding Judge of said Court, Respondents.

Due service of the above return is hereby acknowledged this 9th day of May, 1949.

F. W. Schwarz, Attorney for Relator.

[fol. 50] Caption omitted.

[fols. 51-52] Notice Omitted

[fol. 53] IN THE SUPREME COURT OF MISSOURI

No. —

STATE OF MISSOURI ex rel. THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a Corporation, Relator,

vs.

THE HONORABLE DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, Respondent

Original Proceeding in Mandamus

PETITION FOR WRIT

To the Honorable Judges of the Supreme Court of Missouri:

Comes now The Atchison, Topeka and Santa Fe Railway Company, a corporation, relator above named, and respectfully states and shows to the Court:

1. That it is and was at all times hereinafter mentioned a corporation organized and existing under the laws of the State of Kansas and duly authorized to do business in the State of Missouri.

2. That respondent, David J. Murphy, is the duly elected, qualified, and commissioned Judge of the Circuit Court of the City of St. Louis, State of Missouri, succeeding William L. Mason who was on or about January 1, 1949, duly appointed and was at all material times herein mentioned [fol. 54] Presiding Judge; respondent is now Presiding Judge in Division No. 1 of said Circuit Court, and his predecessor, William L. Mason, made and entered of record the order hereinafter complained of, refusing to entertain jurisdiction and exercise discretion and rule on the merits of the issues presented by relator's motion to dismiss cause No. 26165-D pending in said Court. And relator further represents that all motions in connection with pleadings in law cases prior to trial are heard and determined in Division No. 1 of said Circuit Court.

3. Relator, The Atchison, Topeka and Santa Fe Railway Company, further states that on or about September 2, 1948, Floyd P. Seachris filed a suit against The Atchison,

Topeka and Santa Fe Railway Company, a corporation, defendant (relator herein), said action being numbered 21990-D; that the trial of said case No. 21990-D was commenced in Division No. 5 of the Circuit Court of the City of St. Louis before Judge Mayfield on February 7, 1949; that plaintiff's case was put in evidence; and that on February 9, 1944, during the introduction of evidence by the defendant (relator herein) plaintiff voluntarily dismissed without prejudice.

4. That thereafter on February 15, 1949, Floyd P. Seachris again filed an action in the Circuit Court of the City of St. Louis, State of Missouri, against The Atchison, Topeka and Santa Fe Railway Company, a corporation, defendant, said action being numbered 26165-D; that the petition in cause No. 26165-D is identical to the petition filed in cause numbered 21990-D and a copy thereof is hereto attached and marked Exhibit A.

5. That summons in said cause was issued and served upon defendant on February 17, 1949.

6. That said cause of action arises out of an alleged accident occurring in Waynoka, Oklahoma, and plaintiff seeks damages in the amount of $100,000. Plaintiff and [fol. 55] defendant in said cause are non-residents of the State of Missouri and jurisdiction is based on the Federal Employers' Liability Act.

7. That on April 25, 1949, relator duly and promptly filed its motion to dismiss said action, cause No. 26165-D, in the Circuit of the City of St. Louis, State of Missouri, on the ground of forum non conveniens. Said motion is attached hereto and marked Exhibit B.

8. That thereafter on the 4th day of May, 1949, said motion was presented and submitted in Division No. 1 of the said Circuit Court and to William L. Mason, Judge thereof, duly qualified as aforesaid.

9. That on the 4th day of May, 1949, ruling on said motion was made in words and figures as follows:

> "Defendant's motion to dismiss upon the ground of forum non conveniens denied upon the sole ground that in the opinion of the Court the Court has no jurisdiction or discretion to entertain or grant such a motion.
>
> William L. Mason, Judge."

A copy of said order is attached hereto and marked Exhibit C.

10. Relator further states that respondent's predecessor, by his order of May 4, 1949, has refused to rule upon the merits of relator's motion, duly filed in said cause No. 26165-D and refused to exercise his proper discretion and jurisdiction, and that unless respondent is ordered and compelled to set aside and vacate Judge William L. Mason's said order dated May 4, 1949, and to exercise his proper discretion and jurisdiction in said cause, relator will be compelled to engage in long, expensive, burdensome and vexatious litigation and has no other adequate remedy.

[fol. 56] 11. That there are now pending in said Circuit Court numerous actions involving similar circumstances and that others are continually being filed, and the refusal of respondent to exercise his proper jurisdiction presents questions of extraordinary importance and interest.

12. That it is without an adequate remedy in the premises unless this Honorable Court will transfer and grant it a writ of mandamus as hereinafter prayed.

Wherefore, relator prays that this Honorable Court issue its alternative writ of mandamus commanding that respondent or his successor set aside the said order of May 4, 1949, in cause No. 26165-D and to exercise his proper jurisdiction and to determine on the merits the issues presented by relator's said motion to dismiss, heretofore filed in said cause No. 26165-D aforesaid; or, failing that, that respondent or his successors show cause why he should not so vacate said order and proceed to exercise his proper jurisdiction and discretion in the premises and that upon a hearing hereof, the direction of said alternative writ be made permanent and that the proceedings in said cause No. 26165-D, now pending in the Circuit Court of the City of St. Louis, State of Missouri, be stayed until such hearing and for such other and further relief as to this Honorable Court seem meet and proper in the premises.

John H. Lathrop, Sam D. Parker, Donald H. Sharp, 1200 Land Bank Building, Kansas City 6, Missouri, Tel. VI-0820, Walter R. Mayne, Fred W. Schwarz, 506 Olive Street, St. Louis 1, Missouri, Tel. GA-2660, Attorneys for Relator.

[fol. 57] *Duly sworn to by Donald H. Sharp. Jurat omitted in printing.*

[fol. 58] SUGGESTIONS IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

I

Statement of Facts

In September, 1948, Floyd P. Seachris, a resident of the State of Oklahoma, brought an action under the Federal Employers' Liability Act in the Circuit Court of the City of St. Louis against defendant The Atchison, Topeka and Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Kansas, having no track and operating no trains in the City of St. Louis, Missouri. The accident out of which the suit arose allegedly occurred in Waynoka, Oklahoma. The trial was commenced on February 7, 1949, and defendant brought eight witnesses to St. Louis from Waynoka, Oklahoma. After the introduction of plaintiff's case and during the introduction of evidence by defendant on February 9, plaintiff voluntarily dismissed without prejudice. On February 15, 1949, plaintiff again filed suit against this defendant, the petition being identical to that filed in the first case. Thereafter, in due time, relator, defendant in said action, filed its motion to dismiss the cause without prejudice for the reason that the bringing of said cause unduly burdens and inconveniences the defendant and the witnesses, and unnecessarily burdens the Court, citizens and taxpayers of the City of St. Louis. The motion was presented to respondent's predecessor and on May 4, 1949, he entered the order complained of, ruling that he had no jurisdiction or discretion to entertain said motion. A similar motion was identically ruled by Judge Mason in the case of Lelia M. Blevins, Administratrix of the Estate of Roderick E. Blevins, plaintiff, v. Southern Railway Company, a corporation, defendant, No. 23161-D, the Court therein in a [fol. 59] memorandum opinion based his refusal to entertain jurisdiction upon the case of Bright v. Wheelock, 20 S. W. 2d 684, and the interpretation allegedly given therein to Sections 1163 and 1180 of the Missouri Revised Statutes 1919. In the Blevins case, this Court, on the same issue as

is present here, has heretofore granted its alternative writ of mandamus. For relief from the ruling of respondent on this relator's motion to dismiss the action filed by Floyd P. Seachris, this relator seeks a writ of mandamus from this court.

II

This Court Has Jurisdiction to Entertain This Petition and Ought to Exercise It

The Supreme Court of Missouri has original jurisdiction to entertain petitions for writs of Mandamus and to exercise control over the inferior Courts in its jurisdiction. Missouri Constitution 1945, Article V, Section 4. The existence of concurrent jurisdiction to issue such remedial writs is in no wise a limitation upon the jurisdiction of this Court to entertain this original petition and to issue this writ. State ex rel. v. Tracy, 94 Mo. 217; State ex rel. Deering (banc), 173 Mo. 492, l. c. 510; State ex rel. Grimm (banc), 220 Mo. 483.

III

The Question of Law Presented by Judge Mason's Ruling Is of Great Importance, and This Court Should, Therefore, Exercise Its Powers

The question of law raised by Judge Mason's ruling that he is without jurisdiction or discretion to entertain relator's motion is of general interest and extreme importance to the bar, the Courts and the taxpayers. The increasing frequency with which these Federal Employers' Liability [fol. 60] Act cases are being filed in the Circuit Court of the City of St. Louis by non-resident plaintiffs against non-resident defendants on causes of action arising far distant from St. Louis crowds from the docket the cases between residents and burdens local taxpayers with the expense of trials which in at least some instances ought to be tried elsewhere. In the instant case, for example, the St. Louis Court is asked to hear and St. Louis taxpayers asked to pay a second time the expense of trial of a suit brought by an Oklahoma resident against a Kansas corporation. This case was imported a distance of 647 miles, tried for two days, dismissed without prejudice and is now refiled. The crowding of the docket of the St. Louis Courts and the burden upon the litigants and the taxpayers of

St. Louis by importing such lawsuits raise a problem of vital importance.

IV

Mandamus Is the Proper Remedy

Mandamus is the proper and appropriate remedy to compel judges of inferior courts to hear and determine all issues properly presented, and it is the duty of this Court to require judges of such inferior Courts to exercise their full and whole jurisdiction. State ex rel. v. Brown, 332 Mo. 222, 48 S. W. 2nd 857, l. c. 859; State ex rel. v. Haid (banc), 327 Mo. 567, l. c. 573-4; State ex rel. v. Trimble (banc), 303 Mo. 284, l. c. 291.

V

Relator Has No Other Adequate Remedy

Relator has no other adequate remedy because trial will ensue and the prospective injury to relator, the Court, the taxpayers, and the administration of justice will have become an accomplished fact.

[fol. 61]

VI

Respondent Has Jurisdiction to Entertain Relator's Motion

A. Missouri Circuit Courts were created with and long held the power to apply the principles of forum non conveniens.

Except as limited by the Constitution or by statute, our Circuit Courts have all the rights and powers of the English Chancery and the common law courts. Chicago, B. & Q. Ry. Co. v. Gildersleeve, 219 Mo. 170, 118 S. W. 86; State ex rel. South Missouri Pine Lumber Company v. Deering, 180 Mo. 53, 79 S. W. 454.

Unless repealed or modified, the common law is in effect in Missouri under Sec. 645, Mo. R. S. A., 1939, and for the purpose of the application of this section, courts are at liberty to look to the decisions of the other states as well as to those of the English Courts. Dickey v. Volker, 321 Mo. 235, 11 S. W. 2d 278, 285; Hawkinson v. Johnston, C. C. A. (8) 1941, 122 Fed. 2d 724.

At common law the courts of both England and this country have the discretionary power to refuse jurisdiction

in a case where the parties are non-residents and which in the interests of justice ought to be tried elsewhere. Gulf Oil Co. v. Gilbert, 330 U. S. 501, 507, 91 L. Ed. 1055. It is now settled that nothing in either the Federal Constitution or the Federal Employers' Liability Act precludes the application of forum non conveniens to a case such as the one at bar, Douglas v. N. Y. & N. H. R. R. Co., 279 U. S. 377, and in every jurisdiction we find which has ruled upon the question, except Minnesota, it has been held that the Court has inherent power to determine for itself whether it should assume jurisdiction between non-residents. The following are some of these cases:

[fol. 62] New York—

Murnan v. Wabash R. R. Co., 264 N. Y. 244, 158 N. E. 508;

Douglas v. N. Y. & N. H. R. R. Co., 279 U. S. 377;

Illinois—

Whitney v. Madden (1948), 400 Ill. 185, 79 N. E. (2) 593;

Massachusetts—

Universal Adj. Corp. v. Bank (1933), 184 N. E. 152;

Bethlehem Fab., Inc., v. Watts, 286 Mass. 556, 190 N. E. 829;

Lydia Pinkham Med. Co. v. Gove (1937), 298 Mass. 53, 9 N. E. (2) 573;

Pinson v. Potter (1937), 298 Mass. 109, 10 N. E. (2) 136;

California—

Leet v. H. P. R. Co., 155 P. (2) 42;

New Jersey—

Kantakevitch v. Delaware, L. & W. R. Co., 18 N. J. Misc. 77, 10 Atl. (2) 651 (1940);

Standard S. & C. Co. N. Y. v. Caravel Indust. Corp., 128 N. J. Eq. 104, 15 Atl. (2) 258 (1940);

Anderson v. Delaware, L. & W. R. Co., 18 N. J. Misc. 153, 11 Atl. (2) 607;

James H. Rhodes & Co. v. Chausovsky, 137 N. J. L. 459, 60 Atl. (2) 623 (1948);

New Hampshire—

Jackson & Sons v. Lumbermen's Mut. Cas. Co., 168 Atl. 895 (1933);

Wisconsin—

State ex rel. Goldwyn v. Gehrz (1923), 181 Wis. 238, 194 N. W. 418;

[fol. 63] Louisiana—

Stewart v. Liefenberg (1920), 86 So. 734, 148 La. —;

Florida—

Hagen v. Viney (1936), 169 So. 391, 124 Fla. 747;

Pennsylvania—

Overfield v. Pennroad Corp., 113 F. (2) 6 (C. C. A. Pa.);

Texas—

Morris v. Mo. Pac. R. Co. (1890), 78 Tex. 17, 14 S. W. 228, 9 L. R. A. 349;

U. S.—

Gulf Oil Co. v. Gilbert, 91 L. Ed. 1055, 330 U. S. 501.

And many English cases.

Unless divested of it in some way, our Circuit Court, being a court of general jurisdiction, vested with common law powers and charged by Sec. 645, R. S. 1939, with the duty of applying the common law, has the same right as the Courts of the above listed states to decline its facilities to non-residents when the interests of equity and justice so dictate. That this is true was recognized by this court in State ex rel. v. Grimm (banc), 239 Mo. 135, 179-180, 143 S. W. 483, 497 (hereinafter discussed): "Prior to such enactments [Sections 1736-1737, R. S. 1909] it was generally considered and understood that the right of a non-resident of this state to sue on a cause of action arising in some other state, in the Courts of this state, rested purely upon comity and that our Courts could, in any case where they deemed it wise and proper, decline to assume jurisdiction over or to try the case * * *." It follows that unless our Courts have in some way lost this power, they may still decline to assume jurisdiction if it is wise and proper to do so.

[fol. 64] B. This fundamental and inherent right of a Court to resist misuse of venue and imposition upon its jurisdiction cannot be divested by legislative action.

It is axiomatic that there are certain fundamental judicial powers of which the Courts cannot be deprived by statute. This Court consistently has held that among these powers are the power to punish for contempt, the power

to appoint counsel for the indigent, State ex rel. Gentry v. Becker, 351 Mo. 769, 174 S. W. 2nd 181, and the power to regulate the practice of law, Clark v. Austin, 340 Mo. 467, 101 S. W. 2nd 975. Another fundamental power of the Courts is the discretion exercised in granting continuances, and any attempt by the Legislature to exclude the exercise of the discretion of the Court is an encroachment of one department of government upon the functions of another, prohibited by Article III, Constitution of 1875, now Article II, Constitution of 1945. Kyger et al. v. Koerper (banc), 355 Mo. 772, 207 S. W. 2nd 46.

The right to exercise its judicial discretion and refuse its forum to a case which if tried in its forum would work unnecessary hardship and injustice is a judicial power as fundamental and inherent as are any of the above mentioned powers. It is simply the power of a Court to resist imposition upon its jurisdiction even when jurisdiction is authorized by venue statutes. Gulf Oil Co. v. Gilbert, supra. The power is recognized, we believe, in every Court, except Minnesota, which has considered it. It is incontestably necessary to the effective performance of judicial functions that this discretionary power should be preserved and not denied. Kantakevich v. Delaware L. & W. R. Co., 10 Atl. 2nd 651, 652, 18 N. Jersey Misc. 77; Mr. Paxton Blair, 29 Columbia Law Review 1. Like other fundamental judicial powers such as the discretion to grant or deny continuances, this power cannot be annulled by the Legislature and any attempt to do so by statute would be unconstitutional [fol. 65] as an encroachment by the Legislature upon the functions of the judiciary.

C. Prior decisions do not require the ruling that the Court has no jurisdiction or discretion to rule upon the merits of relator's motion.

Judge Mason's memorandum opinion filed in the case of Lelia M. Blevins, Administratrix of the Estate of Roderick E. Blevins, Deceased, v. Southern Railway Company, No. 21361-D, refusing to hear a similar motion, claims to find support in certain language of the opinion in Bright v. Wheelock, 323 Mo. 840, 20 S. W. 2nd 684. This case refers for authority to Wells v. Davis, 303 Mo. 388, 261 S. W. 58; State ex rel. Foraker v. Hoffman, 309 Mo. 625, 274

S. W. 362; and Shaw v. The Chicago & Alton R. R. Co., 314 Mo. 123, 282 S. W. 416.

An earlier case, State ex rel. v. Grimm, supra, came before the Court on a writ of prohibition by a nonresident defendant seeking an order prohibiting the Circuit Court from further proceeding in an action brought by a nonresident plaintiff on an insurance contract. The defendant contended, among other things, that jurisdiction should not be entertained because to do so would work injustice upon defendant. The Court's opinion squarely predicates itself upon the proposition that the lower Court was required by the Federal Constitution to entertain the suit. That this was erroneous is now settled. Douglas v. N. Y. & N. H. R. R. Co., supra; Gulf Oil Co. v. Gilbert, supra. The Grimm case also examined Newlin v. St. Louis & S. F. R. Co., 222 Mo. 375, 121 S. W. 125, which held that the statutes granting a non-resident plaintiff the right to sue in Missouri were expressions of comity. The Grimm case erroneously interpreted this to mean that it was "mandatory, in harmony and in keeping with * * * the Constitution of the United States * * *" for a State Court to [fol. 66] entertain such a suit. The Grimm case is proved wrong in its interpretation of the Federal Constitution and relator submits is manifestly wrong in its interpretation of the meaning of a statutory enactment of comity.

The Wells case, supra, merely held that an Arkansas administratrix had the capacity to sue a Missouri corporation in a Missouri Court.

In the Foraker case, supra, the defendant, again a Missouri corporation, contended that the statute providing for suit against a railroad in any county where it transacts business is unconstitutional as imposing an unreasonable burden on interstate commerce. The case decided that the statute is constitutional and that the lower Court had jurisdiction.

In the Shaw case, supra, 314 Mo., l. c. 125, the error assigned was that the Illinois administratrix "has no right or authority to maintain this suit in Missouri and the trial court erred in not sustaining the motion to dismiss." The Court relied on the Wells case for authority affirming plaintiff's capacity to sue.

privilege not of right, but of good will. Black's L. Dict., tit. 'Comity.' Now, in reason, courtesy in that behalf has its useful limitations. It may not run riot; it goes circumspectly. It must be courtesy in fact as well as name." State ex rel. Walker v. State Board of Health, 61 S. W. 2nd, l. c. 927.

In order to hold that these sections purport to require respondent to refuse to entertain relator's motion, it is not enough to fail to find within these sections words which "invest" a Circuit Court with the power to apply the principles of forum non conveniens, as was suggested in the dicta of the Bright case. As heretofore shown, this fundamental power is not derived from a statute. The cases in the New York Courts, for example, may be searched in vain for any indication that the power is predicated upon a statute. The question is not whether a statute has "invested" the Courts with this power, but rather whether the Court has by any means been "divested" of the power. It is submitted that like the statutes of New York the statutes of Missouri can be searched in vain for any word which makes it mandatory that a Missouri Court hear every case brought by non-residents against non-residents. Not a word suggests the intent of the Legislature to take away from the Courts this fundamental power to apply the principles of forum non conveniens.

Conclusion

The doctrine of forum non conveniens is now being applied in other State Courts, and it has been approved by the United States Supreme Court. The application of its principles is peculiarly within the purview of the judiciary. The right to decline its facilities where to provide them will work unnecessary burden upon litigants and taxpayers has been recognized in every Court, we believe, to which [fol. 70] the question has been presented, with the exception of Minnesota. It is a fundamental right. It is not predicated upon statute, nor can it be withdrawn by any legislative action. The refusal by the Courts of Missouri to recognize within themselves this fundamental power, which is necessary in extreme instances to preserve justice and protect the Courts, litigants, and taxpayers from abuse, would be a gratuitous abdication of right and responsibility.

To refuse, without express instruction from the Legislature, to exercise this fundamental power is to relegate the judiciary to a position subservient and secondary to the Legislature, and voluntarily to delimit the power of Missouri Courts to something less than that of the New York, Illinois, and other state Courts which have accepted this responsibility.

For these reasons relator submits that this Court ought to order respondent to rule upon the merits of relator's motion to dismiss.

Respectfully submitted, John H. Lathrop, Sam D. Parker, Donald H. Sharp, 1200 Land Bank Building, Kansas City 6, Missouri, Tel. VI-0820; Walter R. Mayne, Fred W. Schwarz, 506 Olive Street, St. Louis 1, Missouri, Tel. GA-2660, Attorneys for Relator.

[fol. 71] EXHIBIT A

STATE OF MISSOURI,
City of St. Louis, ss.:

IN THE CIRCUIT COURT, CITY OF ST. LOUIS, STATE OF MISSOURI

No. 26165-D, Div. 1

FLOYD P. SEACHRIS, *Plaintiff*

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation, 812 Olive Street, St. Louis 1, Missouri, Defendant

Petition

Plaintiff, for his cause of action against the above named defendant, states and alleges:

I

That at all times herein mentioned, defendant is and was a corporation duly organized and existing under and by virtue of law and as such, at all times herein mentioned, was engaged in the business of operating, owning and con-

trolling in interstate commerce, a railroad running into and through the State of Oklahoma and Waynoka, Oklahoma, and various other States of the Union and at all times herein mentioned, was engaged in conducting its business in the City of St. Louis, State of Missouri, and maintained offices and an agent for service of process in said City of St. Louis, Missouri.

[fol. 72]

II

That during all the times herein mentioned, defendant owned and operated in interstate commerce, a railroad and railroad yards in the City of Waynoka, Oklahoma, and plaintiff was in its employ as a switchman, the plaintiff and defendant being engaged in handling and moving interstate commerce and that said plaintiff was an employee within the intent and meaning of the Act of Congress of April 22nd, 1903, c. 149, Sec. 1, 35 Stat. 65, 45 U. S. C. A., Sec. 51 and amendments thereto of the Federal Employers' Liability Act, title "Liability for Common Carriers by Railroad, in Interstate and Foreign Commerce, for injuries to Employees from Negligence," and the Federal Safety Appliance Act of the United States.

III

That on the 26th day of February, 1948, plaintiff was working in defendant's yards, switching cars in and upon the tracks there and while engaged in his duties for defendant, in the furtherance of defendant's interstate commerce as aforesaid and while he was so at work and while plaintiff was riding a car in and upon a track there and was attempting to set the brake on said car, said car upon which plaintiff was riding, was caused to collide violently with another car on said track there, whereby plaintiff was caused to be hurled and thrown from said car upon which he was riding, to the ground and track there, causing plaintiff to be seriously and permanently injured, as hereinafter alleged.

IV

That the occurrence above referred to and resulting injuries to plaintiff, were directly and proximately caused by the negligence, carelessness and omissions and the wrongful violation by the defendant of the Federal Em-

[fol. 73] ployers' Liability Act of the United States and the Federal Safety Appliance Act of the United States and the failure of the defendant and its agents, to comply with the rules, customs and practices prevailing on said road, at said place and at said time, as follows, to-wit:

A. That the defendant's agents, servants and employees, in charge of said train and cut of cars, did then and there kick the car upon which plaintiff was riding, into and upon said track there, at a high, excessive and dangerous rate of speed under the circumstances.

B. That defendant, in violation of the Federal Safety Appliance Act of the United States, used and hauled on its line and system of railroad, a certain car which did not have an efficient handbrake, as required by said Act.

C. That the defendant negligently failed and omitted to provide and maintain for the plaintiff, a reasonably safe place to work.

V

That directly and proximately in consequence of the aforesaid negligent and careless actions of the defendant and defendant's violation of the said Federal Employers' Liability Act and the Federal Safety Appliance Act of the United States, plaintiff sustained serious injuries; that divers bones of his body were broken, injured and fractured; that his head, body, neck, chest, ribs, back, spine, spinal column and intervertebral spaces, between the intervertebral bodies of the spine and the various bones, muscles, nerves, tendons, ligaments and joints, were broken, ruptured, crushed, fractured, lessened, impaired, deranged, displaced, torn, injured and damaged and that the function, use and movement of all the parts and organs thereof, have been permanently impaired, limited and destroyed; that his nerves and nervous system have been greatly shocked and damaged; that because of said injuries, he [fol. 74] has become lame, crippled and unable to properly get about and his means of locomotion and bodily movements are affected and curtailed; that as a direct result of said injuries said plaintiff has been caused to suffer great pain of body and anguish of mind and all of these conditions and consequences are permanent and progressive.

VI

That prior to these injuries plaintiff was a strong, able-bodied man, capable of earning and actually earning a substantially large amount of money each year and that since suffering said injuries plaintiff has been totally disabled and hereafter will be so disabled and that he has lost his earnings and wages to date and will continue to lose them in the future; that by reason of said injuries, he has been made incapable of any gainful activities and in the future will be unable to earn his livelihood; that he has required hospitalization, nursing and medical care as a result of said injuries and he will require the same in the future.

VII

Wherefore, plaintiff prays judgment against the defendant in the sum of One Hundred Thousand Dollars ($100,000.00), together with his costs.

Cox & Cox, W. F. Smith, 706 Chestnut Street, St. Louis 1, Missouri, Chestnut 5492, Attorneys for Plaintiff.

[fol. 75] Circuit Court for the City of St. Louis, State of Missouri

No. 26165-D, Div. 1

Floyd P. Seachris, *Plaintiff*

vs.

The Atchison, Topeka and Santa Fe Railway Company, a Corp., Defendant

Summons

The State of Missouri, to Defendant Atchison, Topeka and Santa Fe Railway Company, a Corporation:

You are hereby summoned to appear before the above-named court and to file your pleading to the petition, copy of which is attached hereto, and to serve a copy of your pleading upon Cox & Cox and W. F. Smith, attorneys for plaintiff, whose address is 706 Chestnut Street, all within 30 days after service of this summons upon you, exclusive

of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition.

Henry L. Berger, Circuit Clerk; by —— ——, Deputy Clerk. (Seal of Circuit Court.)

Dated February 15th, 1949.

[fol. 76] EXHIBIT B

STATE OF MISSOURI,
City of St. Louis, ss.:

IN THE CIRCUIT COURT, CITY OF ST. LOUIS, STATE OF MISSOURI

No. 26165 D. Div. No. 1

FLOYD P. SEACHRIS, *Plaintiff*

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation, Defendant

Motion to Dismiss

Now on this day comes The Atchison, Topeka and Santa Fe Railway Company, defendant in the above entitled cause, and moves the Court to dismiss this cause without prejudice, for the reason that it is brought by a non-resident plaintiff against a non-resident defendant, based on a cause of action arising outside the State of Missouri, and for the further reason that the bringing of said cause in this Court unduly burdens and inconveniences the defendant and the witnesses, and unnecessarily burdens the Court, and burdens the citizens and taxpayers of the City of St. Louis by congesting the docket of this Court and increasing the expense of the maintenance and operation thereof, all as more fully hereinafter set forth. Defendant further states:

1. That this is an action brought by plaintiff under the Federal Employers' Liability Act to recover the sum of $100,000 damages for personal injuries alleged to have been sustained at Waynoka, Oklahoma, on February 26, 1948.

[fol. 77] 2. That plaintiff is now and was at all times mentioned in the petition a resident of the State of Oklahoma and the City of Waynoka.

3. That defendant The Atchison, Topeka and Santa Fe Railway Company is a Kansas corporation having its principal office and place of business at Topeka, Kansas; that it operates 201 miles of main line track in the State of Missouri; and that the closest point that said line of railroad approaches the City of St. Louis is approximately 150 miles distant therefrom; that defendant is duly licensed to do business in the State of Missouri and maintains a ticket office in the City of St. Louis, upon which service of process may be had, but that said office is maintained merely for the solicitation of business.

4. That plaintiff on September 2, 1948, filed a suit against this defendant numbered 21990 D seeking to recover the same amount of damages for the same injury alleged to have been sustained in Waynoka, Oklahoma, on February 26, 1948, and that the petition in said cause is identical to the one filed herein.

That the trial of said case No. 21990 D was commenced in Division No. 5 of this Court before Judge Mayfield on February 7, 1949, and concluded two days later, during the introduction of evidence by defendant, on February 9, by a voluntary dismissal by plaintiff without prejudice.

5. That none of the parties or witnesses resided nor now reside in the City of St. Louis; that plaintiff in said cause No. 21990 D introduced the testimony of one witness from Waynoka, Oklahoma, and introduced the testimony of physicians whose residences and offices are in St. Louis, but that said physicians examined plaintiff merely for the purpose of testifying in said cause and not for the purpose of treating him and did not treat him.

[fol. 78] 6. That at the trial of said cause No. 21990 D, defendant was compelled to and did transport from Waynoka, Oklahoma, to St. Louis, a distance of 647 miles, eight witnesses at a total cost to defendant for expenses and time lost of $909.93; one witness from Amarillo, Texas, a distance of 853 miles, at a total cost of $134.63; one witness from Wellington, Kansas, a distance of 540 miles, at a total cost of $177.45; and one witness from Temple, Texas, a distance of 996 miles, at a total cost of $158.54.

That the total expense to defendant of the trial of the above case was, therefore, $1,380.55, and in addition thereto defendant suffered the inconvenience of loss of time of eleven of its employees for a period varying from two days to one week, resulting in a total number of days lost for its employees of 65 days.

That if defendant is compelled to again try this case in the City of St. Louis, it will have to reincur all of the above expense and inconvenience and that same will be increased because a longer time will be required to retry the cause since the first trial was not completed.

7. That plaintiff in both cases was and is represented by W. F. Smith, who is an attorney and resident of Oklahoma City, Oklahoma, and by the firm of Cox & Cox of St. Louis.

8. That this defendant operates over 600 miles of main line track throughout Oklahoma and that there are adequate courts, both State and Federal, in the State of Oklahoma, in which this cause can be brought and service obtained on defendant, and that there is ample time within the statute of limitations for plaintiff to refile after this motion is sustained.

9. That the trial of this case in St. Louis resulted in no benefit to the City of St. Louis or any resident or taxpayer thereof, but on the contrary was detrimental to them. [fol. 79] That the trial of this case and the trial of others of a similar nature brought in the City of St. Louis by nonresidents based on causes of action arising outside the City of St. Louis and outside the State of Missouri create a crowded condition of the docket and result in inconvenience to the City and to the residents and citizens thereof, and in increased expense to the City.

That only a part of the actual cost of the litigation is charged as costs in the case, and that the City is required to and does bear a large portion of the expense of said litigation.

10. That on February 7, the day on which said Seachris case numbered 21990 D was set and assigned for trial, there were 161 cases on the trial docket; that said Seachris case was No. 20 thereon; that it was the seventh case assigned for trial and that its assignment filled the last available division on the morning of February 7; that the third case so assigned for trial on said day was No. 23352,

Viola Siegel vs. Missouri Pacific R. R. Co.; that plaintiff in said cause was a resident of Jefferson City, Missouri; and that the cause of action arose over 100 miles from the City of St. Louis and that said Missouri Pacific could have been served at the place of plaintiff's residence.

That on said February 7 there were only four other cases assigned out for trial, and during the balance of the week only seven were so assigned, one of which was No. 19048, Willis Sturgeon vs. the L. & N. R. R. Co., in which case plaintiff resided and the cause of action arose in the State of Kentucky.

That out of the total of 161 cases on said trial docket for the week of February 7, only 18 were assigned for trial (three of which were suits against railroads by non-residents of St. Louis and two of which were brought by non residents of Missouri); and that after said Seachris case was assigned for trial, 56 cases subsequent to it on said trial [fol. 80] docket were continued to be reset for trial in the future.

11. That the following table shows the total number of suits filed against railroads in this Court during the years of 1945 to 1948, inclusive, the number brought by plaintiffs who did not reside in St. Louis, Missouri, and in which the cause of action did not arise in St. Louis, and the number of suits brought against railroads which did not run into St. Louis:

Year	Total No. of Cases	Cause of action did not arise or plaintiff did not reside in St. Louis	Against railroads not running into St. Louis
1945	48	30	2
1946	87	60	None
1947	113	76	5
1948	171	134	15

The following table shows the number of suits brought against The Atchison, Topeka and Santa Fe Railway Company in this Court during the years 1945 to April 1, 1949, inclusive:

1945	None
1946	None
1947	6
1948	12
1949 (first 3 months)	9

12. Plaintiff requests the opportunity to introduce oral evidence in support of the allegations of this motion.

Wherefore, in the interests of justice and for the convenience of the parties and witnesses and of this Court and to prevent undue expense to the citizens and taxpayers of the City of St. Louis and burdening of this Court with litigation by a non-resident plaintiff against a non-resident defendant on a cause of action arising outside the State [fol. 81] of Missouri, defendant prays that this cause be dismissed without prejudice.

John H. Lathrop, Sam D. Parker, 1200 Land Bank Building, Kansas City 6, Missouri, Tel. VI 0820; Walter R. Mayne, F. W. Schwarz, 506 Olive Street, St. Louis 1, Missouri, Tel. GA 2660, Attorneys for Defendant.

Service of the above Motion is hereby acknowledge this — day of April, 1949.

——— ———, ——— ———, Attorneys for Plaintiff.

State of Missouri,
County of Jackson, ss:

Sam D. Parker, of lawful age, being first duly sworn, on his oath states that he is agent and one of the attorneys for defendant; that he has read the foregoing motion, knows the contents thereof, and that the matters of fact therein alleged are true.

Sam D. Parker.

Subscribed and sworn to before me this 12th day of April, 1949. Kittie Kilburn, Notary Public Within and for Said County and State. My Commission Expires June 23, 1951.

[fol. 82] EXHIBIT C

IN THE CIRCUIT COURT CITY OF ST. LOUIS

No. 26165 D

FLOYD P. SEACHRIS

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY CO.

Room 1. May 4, 1949

MEMORANDUM FOR CLERK

Defendant's motion to dismiss on the ground of forum non conveniens denied upon the sole ground that in the opinion of the Court the Court has no jurisdiction or discretion to entertain or grant such a motion.

William L. Mason, Judge.

[fol. 83] IN SUPREME COURT OF MISSOURI

[Title omitted]

41558

ORDER—June 13, 1949

Now at this day, on consideration of the petition for a writ of mandamus herein the court doth order that an alternative writ of mandamus issue herein, as prayed, directed to the said respondent, said writ to be returnable to the court en banc in thirty days.

IN THE SUPREME COURT OF MISSOURI

[Title omitted]

No. 41558

ALTERNATIVE WRIT OF MANDAMUS

THE STATE OF MISSOURI:

To David J. Murphy, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of said Court, Greeting:

Whereas, it has been represented to the Supreme Court of the State of Missouri, on the part of The Atchison, Topeka & Santa Fe Railway Company, a corporation, relator, as indicated and set forth in a certain petition for a writ of mandamus, a copy of which is hereto attached and made a part hereof:

Now, Therefore, we being willing that due and speedy justice be done the said petitioner, in this behalf, Command you, the said David J. Murphy, Judge of the Circuit Court of the City of St. Louis, and his successors, as Presiding Judge of said Court, to set aside the order of May 4, 1949 entered in a cause entitled Floyd P. Seachris, plaintiff [fol. 84] versus The Atchison, Topeka and Santa Fe Railway Company, a corporation, defendant, No. 26165-D and to exercise your proper jurisdiction and to determine on the merits the issues presented by relator's motion to dismiss heretofore filed in said cause, or that you show cause, if any you have, before the Supreme Court, en banc, on the 13th day of July 1949 why you should not do so.

Herein fail not at your peril.

(Seal.) In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Jefferson this 16th day of June 1949. Marion Spicer, Clerk, Supreme Court.

IN THE SUPREME COURT OF MISSOURI

[Title omitted]

No. 41558

RETURN TO ALTERNATIVE WRIT OF MANDAMUS—Filed July 12, 1949

Comes now David J. Murphy, Judge of the Circuit Court of the City of St. Louis, Missouri, respondent above named, and, for his return to the alternative writ of mandamus issued herein:

(1) Admits the allegations of paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8 and 9 of relator's petition for writ of mandamus herein.

(2) Admits the allegations of paragraph numbered 10 of relator's petition for writ of mandamus to the effect that respondent's predecessor, by his order of May 4, 1949, refused to rule upon the merits of relator's motion to dismiss, duly filed in said cause No. 26165-D in the Circuit Court of the City of St. Louis, Missouri; and denies each and every other allegation of said paragraph of said petition.

(3) Admits the allegations of paragraph numbered 11 of [fol. 84a] relator's petition for writ of mandamus to the effect that there are now pending in said Circuit Court numerous actions involving similar circumstances and that others are continually being filed, but denies each and every other allegation of said paragraph of said petition.

(4) Denies the allegations of paragraph numbered 12 of relator's petition for writ of mandamus herein.

For further return to the alternative writ of mandamus, this respondent states and avers that:

I. Relator, Atchison, Topeka & Santa Fe Railway Co., is a corporation engaged and engaging in the business of owning and operating a line and system of railroad as a common carrier, transporting freight and passengers for hire, in interstate and intrastate commerce, and operates its said business, and owns and operates a line of railroad in such commerce, in various parts of the State of Missouri.

II. Relator, Atchison, Topeka & Santa Fe Railway Co., maintains and operates in the City of St. Louis, Missouri,

offices for the transaction of its business, designated as "freight department offices", and "passenger department offices".

III. On or about the 15th day of February, 1949, there was filed in the Circuit Court of the City of St. Louis, Missouri, a petition in an action in which Floyd P. Seachris was designated as the plaintiff, and in which relator here, Atchison, Topeka & Santa Fe Railway Co., was designated as defendant, wherein the plaintiff sought damages against defendant in the sum of $100,000.00. In said petition, it was averred that the action was brought under the Federal Employers' Liability Act (45 U. S. C. A., Sec. 51 et seq.) to recover damages which allegedly resulted to plaintiff from negligence of the defendant (relator here), and defendant's violation of the Federal Safety Appliance Act, in a switching movement in a railroad yard of the defendant located in the City of Waynoka, State of Oklahoma, while plaintiff [fol. 85] was engaged in interstate commerce and transportation in the course and scope of his employment by defendant as a switchman. Said petition, and the action founded thereon, were and are numbered in said Circuit Court of the City of St. Louis, Missouri, as No. 26165-D. A copy of said petition in said cause No. 26165-D is attached to relator's petition herein as Exhibit A thereto, and is here incorporated by reference.

IV. Summons was duly issued for defendant (relator here) in said cause in said Circuit Court of the City of St. Louis, Missouri, and was on February 17, 1949, duly served upon the defendant in said cause.

V. On April 25, 1949, after having secured extensions of time within which to plead, defendant in said cause in said Circuit Court (relator here) duly filed in said cause its motion to dismiss said cause entitled "motion to dismiss", a copy of which motion is attached to relator's petition herein as Exhibit B thereto, and is here incorporated by reference. Said motion sought to have said action in said Circuit Court of the City of St. Louis, Missouri, dismissed under the doctrine of "forum non conveniens", it being averred therein substantially that: (1) Plaintiff in said action, at the time the cause of action therein accrued, and now, resides in the City of Waynoka, State of Oklahoma; (2) the defendant in said cause (relator here) is a Kansas

corporation having its principal office and place of business at Topeka, Kansas, operating 201 miles of main line track in the State of Missouri, with the closest point on said line being approximately 150 miles distant from the City of St. Louis, Missouri, where defendant maintains a ticket office upon which service of process may be had, and said office is maintained merely for the solicitation of business; (3) plaintiff had filed a prior action in the said Circuit Court, upon the same cause of action, which prior action had, after two days of trial, been voluntarily dismissed by plaintiff, without prejudice; (4) none of the parties or witnesses resided, or now reside, in the City of St. Louis, [fol. 86] although the plaintiff, in the trial of plaintiff's prior action based upon this same cause of action, introduced the testimony of one witness from Waynoka, Oklahoma, and the testimony of physicians, whose residences and offices are in St. Louis, but who examined plaintiff merely for the purpose of testifying as experts in said cause, and not for the purpose of treating him; (4) at the trial of the prior action filed by plaintiff upon the same cause of action, defendant was compelled to and did transport from Waynoka, Oklahoma to St. Louis, Missouri, a distance of 647 miles, 8 witnesses, together with 2 witnesses from the State of Texas and 1 from the State of Kansas, at a total expense of $1,380.55, and, in addition, defendant suffered the inconvenience of loss of time of 11 of its employees for a total of 63 man days; (5) if defendant is compelled to again try another action upon plaintiff's cause of action in the City of St. Louis, it will have to reincur the same expense and inconvenience, and probable additional expense and inconvenience because a longer time will be required to retry the entire case; (6) the plaintiff Stachris, in both of his actions, was and is represented by W. F. Smith, an attorney of Oklahoma City, Oklahoma, and by the firm of Cox & Cox, attorneys of St. Louis; (7) The defendant (relator here) operates over 600 miles of main line tracks throughout Oklahoma, and there are adequate state and Federal courts in the State of Oklahoma in which plaintiff's cause can be brought and service obtained on defendant, and there is ample time within the statute of limitations for plaintiff to refile his suit in Oklahoma; and (8) the trial of plaintiff's prior action in St. Louis resulted in no benefit to the City of St. Louis, or any resident or taxpayer thereof, but on the contrary was detrimental to them, and the trial

of plaintiff's said case and other cases of a similar nature brought in the City of St. Louis by non-residents based on [fol. 87] causes of action arising outside of the City of St. Louis, State of Missouri, create a crowded condition of the docket and result in inconvenience to said City and to the residents and citizens thereof, and in increased expense to said City. Said motion further set out certain statistical data in connection with the condition of the docket of the Circuit Court of the City of St. Louis, Missouri.

VI. On the 4th day of May, 1949, said motion was presented and submitted in Division No. 1 of the said Circuit Court, and to William L. Mason, Judge thereof.

VII. On the said 4th day of May, 1949, said William L. Mason, as Judge of said Division No. 1 of said Circuit Court of the City of St. Louis, Missouri, entered an order in said cause in said Court, ruling on said motion to dismiss, in words and figures as follows, to-wit:

> "Defendant's motion to dismiss upon the ground of forum non conveniens denied upon the sole ground that in the opinion of the Court the Court has no jurisdiction or discretion to entertain or grant such a motion."

A copy of said order being attached to relator's petition herein as Exhibit C thereto and which is here incorporated by reference.

VIII. Said Circuit Court of the City of St. Louis, Missouri, is a court of general jurisdiction, has had at all times since February 15, 1949, full and complete jurisdiction of the subject matter of said cause No. 26165-D therein, and has had at all times since March 19, 1949, and now has, full and complete jurisdiction of and over the parties to said cause.

IX. The existence of jurisdiction in said Circuit Court of the City of St. Louis, Missouri, of and over both the subject matter of and the parties to said cause of action numbered 26165-D creates an implication of a duty to exercise such jurisdiction, and that the exercise of such jurisdiction may be onerous does not militate against that implication.

[fols: 88-89] X. Under the applicable statutes, under the controlling decisions of the Supreme Court of the State of

Missouri and the Supreme Court of the United States of America, and under the applicable provisions of the Constitution of the State of Missouri (particularly Sections 10 and 14 of Article I thereof) and of the Constitution of the United States of America (particularly Amendment V and Section 1 of Amendment XIV thereof), the said Circuit Court of the City of St. Louis, Missouri, this respondent as one of the Judges thereof, and his predecessor, were and are without jurisdiction or discretion to entertain the said motion to dismiss filed by defendant in said cause No. 26165-D in said Circuit Court (relator here), and for said Circuit Court, or any of the judges thereof (including this respondent and his predecessor) to attempt to exercise discretion to entertain said motion would deprive the plaintiff in said cause No. 26165-D of his rights without due process of law, would deny him equal protection of the laws, and would deny him the right of having the courts open to him to afford him certain remedy for his injury, contrary to the aforesaid provisions of the State and Federal Constitutions.

Wherefore, having fully made return to the alternative writ of mandamus herein, respondent prays that said alternative writ of mandamus be quashed.

Roberts P. Elam, 892 Arcade Building, St. Louis 1, Missouri, Harvey B. Cox, 706 Chestnut Street, St. Louis 1, Missouri, Attorneys for David J. Murphy, Judge of the Circuit Court of the City of St. Louis, Missouri, and his Successors, as Presiding Judge of said Court, Respondent.

Cox & Cox, 706 Chestnut Street, St. Louis 1, Missouri, of Counsel.

Due service of the above return is hereby acknowledged this 11 day of July, 1949.

F. W. Schwarz, Attorney for Relator.

[fol. 90] IN THE SUPREME COURT OF MISSOURI

Court En Banc

[Title omitted]

No. 41461, No. 41558

MOTION OF RELATORS TO CONSOLIDATE ORAL ARGUMENT AND TO EXTEND TIME FOR ARGUMENT—Filed August 10, 1949

Comes now relators in the above captioned cases and state to the court that the principles of law and the appellate issues therein are identical and that their presentation to the court can be expediently and adequately covered by a single argument.

Relators further state that in order to intelligently discuss and portray the issues herein to the court would in all probability require more than the allotted time of forty minutes [fol. 91] and relators therefore suggest the granting of additional time. The question of consolidation and additional time have been taken up with respondents' attorney and he has no objection thereto.

Wherefore, relators move the court for an order consolidating the oral argument of these cases and that such single argument be made on the call of the State ex rel. Southern Railway case on September 14, 1949, and for a further order extending the time for oral argument on the part of relators to one hour and a quarter with equal comparative extension to respondents if desired.

(Signed) Kramer, Campbell, Costello & Wiechert, Fordyce, White, Mayne, Williams & Hartmand, F. W. Schwarz, Attorneys for relator Southern Railway Company. Sam D. Parker, Fordyce, White, Mayne, Williams & Hartman, F. W. Schwarz, Attorneys for relator The Atchison, Topeka & Santa Fe Railway Company.

Service of a copy hereof acknowledged this 9th day of August, 1949.

(Signed) Roberts P. Elam, Attorneys for respondents, by William O. Cramer.

[fol. 92] IN SUPREME COURT OF MISSOURI

ORDER CONSOLIDATING CAUSES—August 12, 1949

[Title omitted]

Now at this day the court having seen and considered relators' motion to consolidate and to extend the time for oral argument, doth order that said motion be, and the same is hereby sustained as to consolidation and causes ordered consolidated, as prayed; and overruled as to the extension of time for oral argument; and the causes are set for argument for Wednesday, September 14, 1949.

IN SUPREME COURT OF MISSOURI

[Title omitted]

SUBMISSION—September 12, 1949

Come now the parties, by their respective attorneys, and submit the above entitled causes to the court on briefs.

[fol. 93] [File endorsement omitted]

IN THE SUPREME COURT OF MISSOURI

En Banc

September Session, 1949

No. 41,461 *

STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation, Relator,

vs.

WALDO C. MANFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri and His Successors as Presiding Judge of Said Court, Respondent

No. 41,558 *

STATE OF MISSOURI ex rel. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation, Relator,

vs.

The Honorable DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, Respondent

OPINION—Filed October 10, 1949

These two cases involve identical issues and for that reason they were consolidated for argument before this court. They are original proceedings in mandamus to compel the trial court to use discretion in passing on relators' motions to dismiss these actions brought under the Federal Employers' Liability Act. The trial court (William L. Mason, deceased) denied the motions on the sole ground that in his opinion the court had no jurisdiction or discretion to entertain or grant them.

Relator Southern Railway Company was sued by Lelia M. Blevins, Administratrix, in the circuit court of the city of St. Louis for $100,000 for the death of her husband, based on the Federal Employers' Liability Act. This relator filed a motion to dismiss this action on the ground of inap-

[fol. 94] propriate forum within the doctrine of *forum non*

conveniens. This motion alleged that the plaintiff was a resident of Tennessee and was appointed administratrix of the estate of her husband by a Tennessee probate court, and that her husband was also a resident of that state at the time of his death. The motion further stated that this relator was a Virginia corporation and that the alleged acts of negligence took place near the boundary line between the states of Virginia and Tennessee, some 700 miles from St. Louis. It further emphasized the added expense of trying the case in St. Louis rather than at or near the place the alleged cause of action arose and where the parties and witnesses resided.

Floyd P. Seachris filed suit in the circuit court of St. Louis against the relator, the Atchison, Topeka and Santa Fe Railroad Company, under the Federal Employers' Liability Act, for alleged injuries he received at Waynoka, Oklahoma. This relator also filed a motion to dismiss that action under the doctrine of *forum non conveniens.* The facts alleged in this motion are similar to the facts alleged by the relator, the Southern Railway Corporation, except in this instance it is alleged that Waynoka is 647 miles from St. Louis.

As previously stated, the trial court denied these motions. The ground for the denial of each of these motions was that the "Court has no jurisdiction or discretion to entertain or grant such a motion."

The sole question before us is: May a trial judge of a circuit court of this state exercise his judicial discretion in determining whether to retain or relinquish jurisdiction of a case brought under the Federal Employers' Liability Act when a motion to dismiss on the sole ground of *forum non conveniens* is presented before him for a ruling?

In the case of Gulf Oil Corporation v. Gilbert, 330 U. S. 501, 91 L. Ed. 1055, 67 S. Ct. 839, l.c. 841-842, the Supreme Court of the United States said:

"It is true that in cases under the Federal Employers' Liability Act, 45 U. S. C. A. § 51 et seq., we have held that [fol. 95] plaintiff's choice of a forum cannot be defeated on the basis of *forum non conveniens.* But this was because the special venue act under which those cases are brought was believed to require it. Baltimore & Ohio R. Co. v. Kepner, 314 U. S. 44, 62 S. Ct. 6, 86 L. Ed. 28, 136 A. L. R. 1222; Miles v. Illinois Central R. Co., 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129, 146 A. L. R. 1104. Those decisions

do not purport to modify the doctrine as to other cases governed by the general venue statutes''

That court upheld the Federal District Court of New York when it dismissed the plaintiff's suit on the ground that the doctrine of *forum non conveniens* applied. But that action was brought under the general venue statute. It was not a Federal Employers' Liability case.

In the case of Ex-Parte Collett, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. (Adv. Sheets) 901, l.c. 903 and 904-905, the Supreme Court of the United States said:

''Prior to the current revision of title 28 of the United States Code, *forum non conveniens* was not available in Federal Employers' Liability Act suits. Baltimore & O. R. Co. v. Kepner, 314 U. S. 44, 86 L. ed. 28, 62 S. Ct. 6, 130 ALR 1222 (1941); Miles v. Illinois C. R. Co., 315 U. S. 698, 86 L. ed. 1129, 62 S. Ct. 827, 146 ALR 1104 (1942); see Gulf Oil Corp. v. Gilbert, 330 U. S. 501, 505, 91 L. ed. 1055, 1060, 67 S. Ct. 839 (1947). The new Code, however, provides that 'For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.' This is § 1404 (a).''

''Section 6 of the Liability Act defines the proper forum; § 1404 (a) of the Code deals with the right to transfer an action properly brought. The two sections deal with two separate and distinct problems. Section 1404 (a) does not limit or otherwise modify any right granted in § 6 of the Liability Act or elsewhere to bring suit in a particular district. An action may still be brought in any court, state or federal, in which it might have been brought previously.

''The Code, therefore, does not repeal § 6 of the Federal Employers' Liability Act.''

[fol. 96] Section 1404 (a), supra, became effective September 1, 1948, and applies only to civil suits brought in the federal courts. It has no application to Federal Employers' Liability suits brought in state courts. We have no machinery to transfer these two cases, one to the state or federal courts of Tennessee and the other to the courts of Oklahoma. Relators do not contend that this section applies to the problem before us. They do not ask that the two suits in question be transferred but they rely upon the common law doctrine of *forum non conveniens* which calls for a dismissal of the action.

"While the substantial factors to be weighed in determining a motion under Section 1404 (a) may be similar to those involved in a consideration of forum non conveniens, yet it seems clear that transfer under Section 1404 (a) is something more than and somewhat different from dismissal under forum non conveniens. In the first place, the procedure to be followed in affirmatively invoking the two remedies is drastically different. Under Section 1404 (a) a case is not dismissed but merely transferred to the more convenient forum; under forum non conveniens a case is dismissed and must be instituted anew in the more convenient forum, carrying with it the inherent and jeopardous hazard of being barred therein by the statute of limitations. The danger of having the action barred in such a manner was one of the principal reasons for Mr. Justice Black's dissent in Gulf Oil Corp. v. Gilbert, 1947, 330 U. S. 501, 516 [15 LW 4315].

"The doctrine of forum non conveniens has been held inapplicable to cases instituted under 'special venue' statutes, such as actions arising under the Federal Employers' Liability Act and the antitrust laws. Such types of cases may be transferred under Section 1404 (a), however. Ex parte Collett, 1949 * * * 17 U. S. L. W. 4453; United States v. National City Lines, 1949, * * * 17 U. S. L. W. 4459. In this respect, then, the two remedies are also different." U. S. D. C., Del. (Rodney, J.); Cinema Amusements, Inc. v. Loew's, Inc., June 10, 1949, 18 U. S. L. W. 2021.

Thus, with reference to Federal Employers' Liability [fol. 97] actions brought in state courts the law is the same now as it was before Section 1404 (a) was enacted.

The case of Baltimore and Ohio R. Co. v. Kepner, 314 U. S. 44, 86 L. Ed. 28, 62 S. Ct. 6, l.c. 9-10, was a suit brought in a state court of Ohio against an injured resident employe of the Baltimore and Ohio Railroad to enjoin him from prosecuting a suit he instituted in the United States District Court of New York under the Federal Employers' Liability Act for an injury he received in the State of Ohio. The Supreme Court of Ohio denied the injunction. Upon application of the railroad, the Supreme Court of the United States issued its writ of certiorari to review the Ohio decision. In affirming the decision of the Supreme Court of Ohio, that court said:

"The real contention of petitioner is that despite the admitted venue respondent is acting in a vexatious and in-

equitable manner in maintaining the federal court suit in a distant jurisdiction when a convenient and suitable forum is at respondent's doorstep.

"We read the opinion of the Supreme Court of Ohio to express the view that if it were not for Section 6 of the Employers' Liability Act the requested injunction would be granted on the undisputed facts of the petition. Section 6 establishes venue for an action in the federal courts. As such venue is a privilege created by federal statute and claimed by respondent the Supreme Court of Ohio felt constrained by the Supremacy Clause to treat Section 6 as decisive of the issue. It is clear that the allowance or denial of this federal privilege is a matter of federal law, not a matter of state law under Erie Railroad Co. v. Tompkins, 304 U. S. 64, 72, 58 S. Ct. 817, 819, 82 L. Ed. 1188, 114 A. L. R. 1487. Its correct decision depends upon a construction of a federal act. Consequently the action of a state court must be in accord with the federal statute and the federal rule as to its application rather than state statute, rule or policy.

"Petitioner presses upon us the argument that the action of Congress gave an injured railway employee the privilege of extended venue, subject to the usual powers of the state [fol. 98] to enjoin what in the judgment of the state courts would be considered an improper use of that privilege. This results, says petitioner, because the Act does not in terms exclude this state power. As courts of equity admittedly possessed this power before the enactment of Section 6, the argument continues, it is not to be lightly inferred that the venue privilege was in disregard of this policy. But the federal courts have felt they could not interfere with suits in far federal districts where the inequity alleged was based only on inconvenience. There is no occasion to distinguish between the power and the propriety of its exercise in this instance since the limits of the two are here co-extensive. The privilege was granted because the general venue provisions worked injustices to employees. It is obvious that no state statute could vary the venue and we think equally true that no state court may interfere with the privilege, for the benefit of the carrier or the national transportation system, on the ground of inequity based on cost, inconvenience or harassment. When the section was enacted it filled the entire field of venue in federal courts. A privilege of venue granted by the legislative body which

created this right of action cannot be frustrated for reasons of convenience or expense. If it is deemed unjust, the remedy is legislative, a course followed in securing the amendment of April 5, 1910, for the benefit of employees."

The case of Miles v. Illinois Central R. Co., 315 U. S. 698, 86 L. Ed. 1129, 62 S. Ct. 827, l.c. 830-831, was a suit to review the action of the Tennessee Court of Appeals which had enjoined the plaintiff, a resident of Tennessee, from prosecuting a suit under the Federal Employers' Liability Act in the circuit court of St. Louis, Missouri, for the death of her husband which occurred in Tennessee while working for the railroad. In ruling the case the court said:

"In the legislative history of section 6, the provision that removal may not be had from a 'State court of competent jurisdiction' was added to the House bill on the floor of the Senate and later accepted by the House, in order to assure [fol. 99] a hearing to the employee in a state court. Words were simultaneously adopted recognizing the jurisdiction of the state courts by providing that the federal jurisdiction should be concurrent. The venue of state court suits was left to the practice of the forum. The opportunity to present causes of action arising under the F. E. L. A. in the state courts came, however, not from the state law but from the federal. By virtue of the Constitution, the courts of the several states must remain open to such litigants on the same basis that they are open to litigants with causes of action springing from a different source. This is so because the Federal Constitution makes the laws of the United States the supreme law of the land, binding on every citizen and every court and enforceable wherever jurisdiction is adequate for the purpose."

"Since the existence of the cause of action and the privilege of vindicating rights under the F. E. L. A. in state courts spring from federal law, the right to use in state courts of proper venue where their jurisdiction is adequate is of the same quality as the right to sue in federal courts. It is no more subject to interference by state action than was the federal venue in the Kepner case."

"The permission granted by Congress to sue in state courts may be exercised only where the carrier is found doing business. If suits in federal district courts at those points do not unduly burden interstate commerce, suits in similarly located state courts cannot be burdensome. As

Congress has permitted both the state and federal suits, its determination that the carriers must bear the incidental burden is a determination that the state courts may not treat the normal expense and inconvenience of trial in permitted places, such as the one selected here, as inequitable and unconscionable."

Thus, it is clear that under the Kepner and Miles cases, supra, a state court cannot dismiss a Federal Employers' Liability case solely under the *forum non conveniens* doctrine.

"*The Federal Employers' Liability Act, as interpreted by Kepner, increases the number of places where the defendant may be sued and makes him accept the plaintiff's* [fol. 100] *choice.*" (Italics ours.) Gulf Oil Corporation v. Gilbert, supra, 67 S. Ct. 839, l.c. 842.

Relators rely mainly upon the case of Douglas v. New York, N. H. & H. R. Co., 279 U. S. 377, 73 L. Ed. 747, 49 S. Ct. 355. In that case a resident of Connecticut brought a suit in a state court of New York under the Federal Employers' Liability Act against the defendant, a Connecticut corporation, for personal injuries inflicted in Connecticut. The trial court dismissed the action under a statute which it held gave it discretion in suits brought by non-resident plaintiffs. The trial court action was affirmed by the New York Court of Appeals. This was the statute in question: "An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only: * * * 4. Where a foreign corporation is doing business within this State."

The Supreme Court of the United States held that this statute was not in violation of Article 4, Section 2, of the Constitution of the United States, as discriminating between citizens of New York and citizens of other states when construed as using the word "resident" in the strict primary sense of one actually living in the place for a time, irrespective of domicile. Such was the construction placed upon this statute by the New York Court of Appeals. It also held that state courts are not required to entertain suits under the Federal Employers' Liability Act but are empowered to do so.

We do not think this case sustains the relator. The common law doctrine of *forum non conveniens* is not even mentioned in the opinion. In the first place, Missouri does

not have a statute similar to the New York statute which the courts of that state have held to give them discretionary power to dismiss an action brought by a non-resident as distinguished from a citizen of another state. Also, Missouri permits citizens of this state to file Federal Employers' Liability cases in its courts. To deny the same privilege to citizens of another state would violate Article 4, Section 2, of the Constitution of the United States.

Relators also rely upon the case of Chambers v. Baltimore [fol. 101] & Ohio Railroad Co., 207 U. S. 142, 28 S. Ct. 34, l.c. 36, 52 L. Ed. 143. In that case the wife of an employe brought suit in a state court of Ohio for injuries received by her husband in Pennsylvania which caused his death. Both the husband and wife were residents of the latter state. The court held that an Ohio statute which permits suits in Ohio state courts for wrongful death occurring in another state only when the decedent was a citizen of Ohio did not violate the Privileges and Immunity Clause of the Federal Constitution (Article 4, Section 2). In ruling the case, that court said:

"The courts were open in such cases to plaintiffs who were citizens of other states if the deceased was a citizen of Ohio; they were closed to plaintiffs who were citizens of Ohio if the deceased was a citizen of another state. So far as the parties to the litigation are concerned, the state, by its laws, made no discrimination based on citizenship, and offered precisely the same privileges to citizens of other states which it allowed to its own. There is, therefore, at least a literal conformity with the requirements of the Constitution."

The opinion in the Chambers case deals only with the constitutionality of a state statute; it does not mention the Federal Employers' Liability Act nor the doctrine of *forum non conveniens*. This state does not have any such statute. We fail to see its applicability to the issue before us.

The Federal Employers' Liability Act does not compel the courts of this state to hear cases arising under that act, but it empowers our courts to do so.

Since Missouri does allow its citizens to maintain Federal Employers' Liability actions in its courts, (see the many such cases listed in the Missouri Digest) it follows that not to allow citizens of other states the right to file Federal Employers' Liability suits in our state courts would violate

Article 4, Section 2, of the Constitution of the United States.

The relators do not contend that the circuit court of St. Louis does not have jurisdiction of the parties or of the sub-
[fol. 102] ject matter of these two suits, or that there is any state statute that would prohibit maintaining these suits in our state courts, but their sole contention is that the common law doctrine of *forum non conveniens* should be open to them in these cases. Under the Kepner and Miles cases, supra, the doctrine of *forum non conveniens* is not open to relators in the two Federal Employers' Liability cases in question.

Respondents also contend that under our Constitution and statutes the doctrine of *forum non conveniens* cannot be recognized in Missouri. Since we have already ruled the trial court had no discretion in Federal Employers' Liability cases, it is not necessary to discuss the Missouri law upon that subject.

From what we have said, it follows that our writ should be quashed. It is so ordered.

Ernest M. Tipton, Judge.

All concur.

[fol. 103] IN SUPREME COURT OF MISSOURI

41558

Mandamus

STATE OF MISSOURI, at the Relation of The Atchison, Topeka & Santa Fe Railway Company, a Corporation, Relator,

vs.

DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, Respondent

41461

Mandamus

STATE OF MISSOURI, at the Relation of Southern Railway Company, a Corporation,

vs.

WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, Respondent

JUDGMENT—October 10, 1949

Now at this day, come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the alternative writs heretofore issued herein, be, and the same are hereby quashed. (Opinion filed)

[fol. 104] IN THE SUPREME COURT OF MISSOURI

[Title omitted]

RELATORS' MOTION FOR REHEARING—Filed October 22, 1949

Come now relators herein and respectfully move the Court to set aside its opinion and judgment herein on October 10, 1949, and to grant relators a rehearing of this cause, and for grounds of this motion state that the Court has overlooked

and misinterpreted material matters of law, as shown by its opinion in the following respects.

I

When on pages 2 and 3 of its opinion it quoted from *Gulf Oil Corporation v. Gilbert*, 330 U. S. 501, 91 L. Ed. 1055, 67 S. Ct. 839, l. c. 841-842, language to the effect that plaintiff's choice of forum in cases under the Federal Employers' Liability Act cannot be defeated on the basis of forum non conveniens, presumably thereby to indicate that our state courts were bound to retain jurisdiction in Federal Employers' Liability Act cases. The Court in so doing [fol. 105] overlooked the fact that in the Gulf Oil case this language was being used in connection with cases instituted in the United States district courts and also that the venue provision in the Act is a special venue statute, binding on the federal courts but not binding on the state courts.

II

When on pages 3 and 4 of the opinion it quoted from *Ex Parte Collett*, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed. (Adv. Sheets) 901, l. c. 903, 904-905, it overlooked and misinterpreted that part of the Collett opinion which states that the doctrine of forum non conveniens is applicable to Federal Employers' Liability Act cases and overlooked the opinion of the United States Supreme Court in *United States v. National City Lines*, 334 U. S. 573, 92 L. Ed. 1584 (relators' reply brief, page 20).

III

On pages 5 and 6, it relies on the case of *Baltimore and Ohio R. Co. v. Kepner*, 314 U. S. 44, 86 L. Ed. 28, 62 S. Ct. 6, l. c. 9-10, as sustaining the asserted proposition that a state court must re-train jurisdiction of Federal Employers' Liability Act cases. In so relying on said case, the Court has overlooked the fact that this case had to do with the power of a state court to restrain one of its citizens from bringing a Federal Employers' Liability Act case in the federal court in another state. The case had nothing to do with, nor did it discuss, the proposition of compulsory retention of a Federal Employers' Liability Act case by a state court in which the action is brought. The basis of the case was that inasmuch as Section 6 of the Federal Em-

ployers' Liability Act encompassed special venue provisions, a state did not have the right to prevent one of its citizens from bringing suit in the first instance in any place coming within the provisions of such venue statute.

[fol. 106] IV

When on pages 6 and 7 of the opinion the Court relies on the case of *Miles v. Illinois Central R. Co.*, 315 U. S. 698, 86 L. Ed. 1129, 62 S. Ct. 827, l. c. 830-831, it misinterprets the Miles case in the same manner that it misinterprets the Kepner case, supra. The Miles case does not hold that the doctrine of forum non conveniens is inapplicable in Federal Employers' Liability Act cases but, on the contrary, held that a state court was not compelled by federal law to retain jurisdiction in such cases. The majority opinion in the Miles case is contrary to this Court's opinion and supports relators' position here.

V

On page 8 of the opinion this Court states that the case of *Douglas v. N. Y., N. H. & H. R. Co.*, 279 U. S. 377, 73 L. Ed. 747, 49 S. Ct. 355, does not sustain relators' position but in doing so, it misinterprets the facts and the holding of the United States Supreme Court. The United States Supreme Court in that case declared the law to be that neither the United States Constitution nor the Federal Employers' Liability Act deprived the State of New York of the right to apply the doctrine of forum non conveniens to a Federal Employers' Liability action brought in the state court.

So, on page 9 of its opinion, the Court overlooks and misinterprets the holding of the United States Supreme Court in the Douglas case when it states that not to allow citizens of other states to file Federal Employers' Liability Act suits in the Missouri courts would violate Article 4, Section 2 of the Federal Constitution. This issue was presented by the plaintiff in the Douglas case and the Supreme Court held that the rejection of a Federal Employers' Liability Act case by a state court did not violate these constitutional provisions.

[fol. 107] The Court also overlooked the case of *Herb* v. *Pitcairn*, 324 U. S. 117, 89 L. Ed. 789 (1945) (relator Southern Railway Company's brief, page 51) approving the opinion of *Douglas* v. *N. Y., N. H. & H. R. Co.*, supra.

No suggestions are filed by relators in support of this Motion for Rehearing for the reason that all matters covered herein were fully covered in relator Southern Railway Company's and relator Atchinson, Topeka and Santa Fe Railway Company's briefs and relators' joint reply brief, all of which have been overlooked by this Court. Any suggestions filed in support of this motion would, therefore, be mere reiteration.

Respectfully submitted, Kramer, Campbell, Costello & Wiechert, First National Bank Bldg., E. St. Louis, Ill. Fordyce, White, Mayne, Williams & Hartman, F. W. Schwarz, 506 Olive Street, St. Louis, Missouri, Attorneys for Relator, Southern Railway Company.

John H. Lathrop, Sam D. Parker, Donald H. Sharp, 1200 Land Bank Bldg., Kansas City, Mo., Walter R. Mayne F. W. Schwarz, 506 Olive Street, St. Louis, Missouri, Attorneys for Relator, The Atchison, Topeka and Santa Fe Railway Company.

[fol. 108] IN SUPREME COURT OF MISSOURI

ORDER DENYING REHEARING—November 14, 1949

Now at this day, the court having seen and fully considered relators' motion for a rehearing in the above entitled cause, doth order that said motion be, and the same is hereby overruled.

[fols. 109-110] [File Endorsement Omitted]

IN THE SUPREME COURT OF MISSOURI

[Title omitted]

MOTION TO STAY MANDATE—Filed November 17, 1949

Come now Southern Railway Company and The Atchison, Topeka and Santa Fe Railway Company, Relators in the above consolidated causes, and move the Court to stay the mandate therein for ninety (90) days to give Relators time

to prepare a petition for certiorari in the Supreme Court of the United States.

Kramer, Campbell, Costello & Wiechert, F. W. Schwarz, Fordyce, White, Mayne, Williams & Hartman, Attorneys for Relator, Southern Railway Co.

John H. Lathrop, Sam D. Parker, Donald H. Sharp, Walter R. Mayne F. W. Schwarz, Attorneys for Relator, The Atchison, Topeka and Santa Fe Ry. Co.

[fol. 111] In Supreme Court of Missouri

Order Staying Mandate—November 17, 1949

Come now the relators, by attorney, and file and present to the court their motion to stay the mandate in the above consolidated cause, which motion is by the court examined and sustained and the mandate ordered stayed as prayed.

[fols. 112-113] Amended Praecipe Omitted

[fol. 114] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 115] Supreme Court of the United States, October Term, 1950

No. 15

Order Allowing Certiorari—Filed March 27, 1950

The petition herein for a writ of certiorari to the Supreme Court of the State of Missouri is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 116] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 16

ORDER ALLOWING CERTIORARI—Filed March 27, 1950

The petition herein for a writ of certiorari to the Supreme Court of the State of Missouri is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

NO. 15

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IN THE

Supreme Court of the United States

October Term, [redacted] 1950

No. [redacted] 15

STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation, *Petitioner*,

v.

WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI, AND BRIEF IN SUPPORT THEREOF.

SIDNEY S. ALDERMAN,
BRUCE A. CAMPBELL,
FRED W. SCHWARZ,
H. G. HEDRICK,
Attorneys for Petitioner,
Southern Railway Company.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

October Term, 1949

No.

STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation, *Petitioner,*

v.

WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

Petitioner, Southern Railway Company, a corporation, respectfully prays that a writ of certiorari issue to the Supreme Court of the State of Missouri to review the final judgment entered in its case No. 41461 under the above

title, quashing its alternative writ of mandamus issued April 13, 1949, and refusing to order the Circuit Court of the City of St. Louis, Missouri, to entertain and determine a motion to dismiss an action brought under the Federal Employers' Liability Act under the principle of *forum non conveniens*.

SUMMARY STATEMENT OF THE CASE.

On October 13, 1948, Lelia M. Blevins, who had been appointed administratrix of the estate of Roderick E. Blevins by a Tennessee Court, filed an action under Federal Employers' Liability Act in the Circuit Court of the City of St. Louis, Missouri, against Southern Railway Company, relator below, for $100,000.00, on account of the death of said Roderick E. Blevins while in the employ of the said relator, in Tennessee (R. pp. 19-24). Both the administratrix and the deceased were residents of Tennessee. On November 13, 1948, said relator moved to dismiss on the ground of inappropriate forum within the doctrine of *forum non conveniens*, and on March 14, 1949, the presiding judge denied the motion on the sole ground that he had no jurisdiction to entertain it (R. pp. 24-30). On March 31, 1949, relator below filed its petition for writ of mandamus in the Missouri Supreme Court and that court, on April 12, 1949, issued its alternative writ (R. pp. 1-18, 30-31) and in due time respondent below made his return (R. pp. 31-35). Thereafter, the Missouri Supreme Court quashed its alternative writ of mandamus and entered judgment against petitioner upon the theory that Section 6 of Federal Employers' Liability Act, as construed by this Court in *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, and *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, compelled the Circuit Court of the City of St. Louis to retain jurisdiction of the F. E. L. A. action and determine it, and denied to that Court the right to consider any element of convenience and to apply the principles and doctrine of *forum non conveniens* in dismissing the action (R. pp. 67-75).

THE OPINION BELOW.

The opinion of the Missouri Supreme Court appears at page 67 and following of the transcript filed herewith. The opinion has not yet been published in the official reports of the Missouri Supreme Court, but it is reported in 224 S. W. (2d) 105.

The decision of the Missouri Supreme Court was based solely upon its determination of a question of federal law, (R. pp. 74-75).

JURISDICTION.

The judgment sought to be reviewed was entered October 10, 1949 (R. pp. 67-75); a petition for rehearing was duly filed October 22, 1949 (R. pp. 76-79); and the petition for rehearing was denied November 14, 1949 (R. pp. 79-80).

The jurisdiction of this Court is invoked under Section 1257, Title 28, United States Code, providing for review by this Court by certiorari of decisions of the highest courts of the several States wherein a right or privilege is specifically set up or claimed under the Constitution or Statutes of the United States.

Specifically, this petitioner says:

(1) The Missouri Supreme Court decided a federal question of substance contrary to the decisions of this Court by construing and applying Section 6 of the Federal Employers' Liability Act (Sec. 56, Title 45, U. S. Code) to inhibit State courts from applying the doctrine of *forum non conveniens* in Federal Employers' Liability Act cases.

> *Second Employers' Liability Cases*, 223 U. S. 1;
> *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377;
> *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698;
> *Ex Parte Collett*, 337 U. S. 55.

(2) The Missouri Supreme Court denied to petitioner the equal protection of the law and deprived petitioner of its property without due process of law and abridged its

privileges in violation of Section 1 of Amendment XIV of the Constitution of the United States, in that by denying the writ of mandamus, it did not require the Missouri Circuit Court to exercise its discretion under the doctrine of *forum non conveniens*.

Douglas v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377.

(3) The Missouri Supreme Court misapplied Section 2 of Article IV of the Constitution of the United States in holding that the application of the doctrine of *forum non conveniens* by the Missouri Circuit Court would violate that provision.

Douglas v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377;
McKnett v. *St. L. & S. F. Ry. Co.*, 292 U. S. 230.

THE QUESTIONS PRESENTED.

1. Is a state court which has jurisdiction of an action under the Federal Employers' Liability Act denied the right and power, by the terms and provisions of Section 6 of said Act, to exercise its judicial discretion in determining whether to retain or relinquish jurisdiction of the case under the doctrine of *forum non conveniens*?

2. Does Section 6 of the Federal Employers' Liability Act give the plaintiff in an action covered by said Act an absolute right to a trial in any state court in which he elects to commence his action and where the defendant is amenable to service?

3. Is there any provision of the Constitution of the United States which limits the right of a state court to exercise its discretion, under the doctrine of *forum non conveniens*, to retain or relinquish jurisdiction of an action under the Federal Employers' Liability Act otherwise within its jurisdiction?

4. Is there any authority under the Constitution of the United States for the Congress to enact a statute which

would compel a state court of competent jurisdiction to entertain any action under the Federal Employers' Liability Act which is filed with it, regardless of considerations of inconvenience and imposition, and to deny to the state court the right to dismiss the action under the doctrine of *forum non conveniens?*

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Missouri Supreme Court, in holding as a matter of law that Section 6 of the Federal Employers' Liability Act (Sec. 56, Title 45, U. S. Code) places upon the courts of Missouri of competent jurisdiction an absolute duty to hear and determine any action under the Federal Employers' Liability Act brought before it by any plaintiff against any defendant, and that it denies to the Missouri courts the right to apply the doctrine of *forum non conveniens* and dismiss a case imported into its jurisdiction, has decided a federal question of substance directly in conflict with the decision of this Court in

Douglas v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377,

and in a way not in accord with the principles announced by this Court in

Ex Parte Collett, 337 U. S. 55,
Miles v. *Illinois Central R. Co.*, 315 U. S. 698, and
Second Employers' Liability Cases, 223 U. S. 1, and

in a way in direct conflict with decisions on the same question by the Supreme Courts of other states.

Murnan v. *Wabash R. Co.*, 246 N. Y. 244, 158 N. E. 508,
Taylor v. *Southern Ry. Co.*, 350 Ill. 139, 182 N. E. 805.

2. The Missouri Supreme Court denied to Southern Railway Company, relator below, the equal protection of the law

and deprived it of its property without due process of law, in violation of Section 1 of Amendment XIV of the Constitution of the United States, by refusing to order and direct the Circuit Court of the City of St. Louis, Missouri, to hear and determine the petition of said relator, invoking the principle and doctrine of *forum non conveniens*, to dismiss the action under the Federal Employers' Liability Act filed against it by a non-resident of Missouri.

3. The Missouri Supreme Court misinterpreted and misapplied Section 2 of Article IV of the Constitution of the United States in holding that application of the doctrine of *forum non conveniens* to dismiss his action would deny to the plaintiff in the action brought under the Federal Employers' Liability Act in the Circuit Court of the City of St. Louis, Missouri, arising out of injuries alleged to have been sustained in the State of Tennessee where plaintiff resided, the privilege which Missouri allows to its own citizens to maintain actions under the Act in its courts of competent jurisdiction.

Douglas v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377;
McKnett v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230;
Gulf Oil Corp. v. *Gilbert*, 330 U. S. 501;
Whitney v. *Madden*, 400 Ill. 185, 79 N. E. 2d 593;
Universal Adjustment Corp. v. *Midland Bank*, 281 Mass. 303, 184 N. E. 152.

4. The same sound reason which moved this Court to assign for hearing the petitions for writ of mandamus and for writ of prohibition in *Ex Parte Collett*, 337 U. S. 55, to remove the "judicial gloss" placed on Section 6 of the Federal Employers' Liability Act by language used in the opinion in *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, in relation to the venue of F. E. L. A. cases in federal courts, is present in this case which involves the even thinner gloss placed on said section by language used in the opinion in *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, with respect

to venue and procedure in state courts in F. E. L. A. cases. Whether said Section 6 deprives state courts of their historic right and authority to apply the principle and doctrine of *forum non conveniens* to F. E. L. A. cases is important in the administration of justice because of the direct conflict between the decision of the Supreme Court of the State of Missouri in the instant case and the decisions of the Court of Appeals of the State of New York in *Murnan* v. *Wabash R. Co.*, 246 N. Y. 244, 158 N. E. 508, of the Supreme Court of the State of Illinois in *Taylor* v. *Southern Ry. Co.*, 350 Ill. 139, 182 N. E. 805, and of the courts of other states which recognize and apply the principle and doctrine of *forum non conveniens* in F. E. L. A. cases.

5. The issues involved in this case are of great public importance. The administrative difficulties for courts arising when litigation is piled up in congested centers instead of being handled at its origin and the unjust tax burden and burden of jury duty imposed upon the residents of the jurisdiction into which foreign cases are imported and the denial to such citizens of access to their over-crowded courts are all factors of public interest which are present in this litigation. The factors of private interest here involved are obvious and are great.

> *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501;
> *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377;
> *Universal Adjustment Corp.* v. *Midland Bank*, 281 Mass. 303, 184 N. E. 152;
> *Whitney* v. *Madden*, 400 Ill. 185, 79 N. E. 2d, 593;
> *Collard* v. *Beach*, 81 N. Y. Supp. 619, 81 App. Div. 582.

6. The decision of the Missouri Supreme Court in this case taken in conjunction with the decision of this court in *Ex Parte Collett*, 337 U. S. 55, has created an incongruous and intolerable situation whereby Federal District Courts may apply the principle of *forum non conveniens* in F. E. L. A. cases but state courts sitting in the same place are

denied the right to apply the same principle under the same facts. This arises from the Missouri court's mistaken interpretation of this Court's decisions construing Section 6 of the Federal Employers' Liability Act. This Court expressly held in *Ex Parte Collett* that Section 6 does not prohibit the application of the doctrine of *forum non conveniens* in such cases.

7. It is respectfully submitted that the situation presented by this record should move this Court to grant certiorari to review the decision of the Missouri Supreme Court.

Rule 38 of Supreme Court Rules, par. 5(a);
Ex Parte Collett, 337 U. S. 55;
Baltimore & Ohio R. Co. v. *Kepner*, 314 U. S. 44.

SOUTHERN RAILWAY COMPANY

By

SIDNEY S. ALDERMAN,
BRUCE A. CAMPBELL,
FRED W. SCHWARZ,
H. G. HEDRICK,
Attorneys for Petitioner.

IN THE

Supreme Court of the United States

October Term, 1949

No.

STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation, *Petitioner,*

v.

WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent.*

BRIEF IN SUPPORT OF PETITION.

THE OPINION BELOW.

The opinion of the Missouri Supreme Court appears at pages 67-75 of the Record. The opinion has not yet been published in official reports of the Missouri Supreme Court but it is reported in 224 S. W. 2d 105.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 1257, Title 28, United States Code. The specific grounds for invoking jurisdiction are set out on pages 3-4 of the annexed petition.

SUMMARY STATEMENT OF THE CASE.

A summary statement of the case is set out on page 2 of the petition annexed hereto.

THE QUESTIONS PRESENTED.

The questions presented are stated on pages 4-5 of the petition annexed hereto, but for convenience, the questions presented are repeated, as follows:

1. Is a state court which has jurisdiction of an action under the Federal Employers' Liability Act denied the right and power, by the terms and provisions of Section 6 of said Act, to exercise its judicial discretion in determining whether to retain or relinquish jurisdiction of the case under the doctrine of *forum non conveniens?*

2. Does Section 6 of the Federal Employers' Liability Act give the plaintiff in an action covered by said Act an absolute right to a trial in any state court in which he elects to commence his action and where the defendant is amenable to service?

3. Is there any provision of the Constitution of the United States which limits the right of a state court to exercise its discretion, under the doctrine of *forum non conveniens,* to retain or relinquish jurisdiction of an action under the Federal Employers' Liability Act otherwise within its jurisdiction?

4. Is there any authority under the Constitution of the United States for the Congress to enact a statute which would compel a state court of competent jurisdiction to entertain any action under the Federal Employers' Liability Act which is filed with it, regardless of considerations of convenience and imposition, and to deny to the state court the right to dismiss the action under the doctrine of *forum non conveniens?*

SUMMARY OF ARGUMENT.

I. The Congress of the United States, in the enactment of the Federal Employers' Liability Act, did not determine, nor did it purport to determine, the venue or control the procedure of State courts. It dealt only with venue and procedure of Federal courts. *Douglas* v. *N. Y. N. H. & H. R. Co.*, 279 U. S. 377; *Second Employers' Liability Cases*, 223 U. S. 1; *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698; *Herb* v. *Pitcairn*, 324 U. S. 117; *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501; *Murnan* v. *Wabash R. Co.*, 246 N. Y. 244; *Taylor* v. *Southern Railway Co.*, 350 Ill. 139.

II. The Missouri Supreme Court erred in its interpretation of the opinions of this Court in the *Kepner* and *Miles* cases. Neither of these cases involved the authority of a state court to exercise the right to apply the historic doctrine of *forum non conveniens* in determining whether it should retain jurisdiction of a F. E. L. A. case and neither the *Kepner* nor the *Miles* case decided that a state might not by judicial decision or legislative enactment regulate the use of its courts generally. This court in the *Miles* case specifically disclaimed that it was holding that states cannot control their courts. See cases cited under point I.

III. Section 6 of the Federal Employers' Liability Act, as construed by the Missouri Supreme Court, invades the fundamental right of the states to regulate and control the venue and procedure of state courts.

IV. Since Congress, by the enactment of Section 1404(a) of the Judicial Code, declared a general federal public policy favoring the application of the principle of *forum non conveniens* to all civil actions in Federal courts, including Federal Employers' Liability Act actions, no possible inference can now be drawn from F.E.L.A. forbidding the application of that doctrine by state courts to actions under that Act. *Ex Parte Collett*, 337 U. S. 55.

V. The application of the doctrine of *forum non conveniens* in F.E.L.A. cases does not violate the privileges and immunities clause of Article IV, Section 2, of the Constitution of the United States. *Douglas* v. *N.Y.N.H. & H.R. Co.*, 279 U. S. 377; *McKnett* v. *St.L. & S.F.Ry.Co.*, 292 U. S. 230; *Chambers* v. *B. & O.R.Co.*, 207 U. S. 142.

ARGUMENT.

I.

The Congress of the United States, in the enactment of the Federal Employers' Liability Act, did not determine, nor did it purport to determine, the venue or control the procedure of state courts. It dealt only with venue and procedure of federal courts.

The Federal Employers' Liability Act was enacted by Congress to implement legislation designed to protect the life, health and safety of railroad employees and to remove or limit the defenses of contributory negligence, assumption of risk, and other defenses recognized at common law. The Act gave to federal courts a jurisdiction of a class of tort actions over which state courts had exercised jurisdiction from the earliest days of state and federal courts.

Section 6 (Section 56, Title 45, United States Code) of the Act, which contains the provision relevant to this case, provides as follows:

> "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

Although the Act contains explicit venue provisions for the federal courts, there are no provisions which even purport to determine the venue or the rules of procedure of state courts. These are left to the states to determine. This has been clearly settled by many decisions of this Court, of other federal courts, and of state courts.

The Act, as passed in 1908, made no reference to state courts. No reference was necessary because concurrent jurisdiction of state courts with federal courts over all cases arising under the laws of the United States had already been recognized by the general jurisdictional act of 1888 (25 Stat. 433), then in effect, and had been generally recognized by the decisions of the courts, federal and state. Notwithstanding the well settled principle of concurrent jurisdiction, the Supreme Court of Errors of Connecticut, in 1909, in *Hoxie* v. *N. Y., N. H. & H. R. Co.*, 82 Conn. 352, 73 Atl. 754, held that Congress did not intend to authorize actions under the Act in state courts. To eliminate the possibility of other state courts falling into the same error, the Act was amended in 1910 to include the express recognition of the concurrent jurisdiction of Federal courts with state courts.

The legislative intent apparent from the plain language of the statute is borne out by the legislative history of the amendment. The House Committee on Judiciary, reporting on the amendment, explained that it was being proposed in order that there could be no excuse for courts of other states to follow the error of the Connecticut court, saying:

> "It is clear under the decisions of the Supreme Court of the United States, that this conclusion of the Connecticut court is erroneous. And the reasons recited by the Connecticut court lead to an opposite conclusion from that which the opinion declares upon the subject. But no harm can come, and much injustice and wrong to suitors may be prevented by an express declaration that there is no intent on the part of Congress to confine remedial actions brought under the

employers' liability act to the courts of the United States." H. R. Rep. No. 513, 61st Cong., 2d Sess., p. 7.

When the bill came to the floor of the House, Representative Sterling, who was in charge of the measure, underscored the sole reason for the provision, saying:

> "The second change in the law provides that the federal courts and the state courts shall have concurrent jurisdiction. I am very sure that they have concurrent jurisdiction as the law is now, but on account of a decision of one of the state courts of Connecticut, where one judge declined to take jurisdiction in a case because it was under a federal statute, the committee thought best to expressly provide in the law that the federal courts and the state courts should have concurrent jurisdiction to avoid the possibility of such a construction in the future." 45 Cong. Rec. 2253.

In reply to a question as to the Committee's purpose in recommending this provision, "Did you intend to limit the state courts in any way in this matter?" the answer was, "Oh, no; just the contrary." 45 Cong. Rec. 2254.

With these authoritative explanations, the bill was passed by the House February 23, 1910. (45 Cong. Rec. 2260.) It was then sent to the Senate and there referred to its Judiciary Committee. The report of that Committee repeated the explanation of the provision made by the House Committee. (Sen. Rep. No. 432, 61st Cong., 2d Sess., p. 5.) Senator Borah, who steered the bill in the Senate, made substantially the same explanation of the purpose of the amendment as had been made in the House. (45 Cong. Rec. 3995, 4034.) The bill was passed by the Senate.

The interpretation of the Act and the 1910 amendment was fully stated by this Court in *Second Employers' Liability Cases*, 223 U. S. 1, as follows (p. 56):

> "We are quite unable to assent to the view that the enforcement of the rights which the congressional act creates was originally intended to be restricted to the Federal courts. The act contains nothing which is suggestive of such a restriction, and in this situation the

intention of Congress was reflected by the provision in the general jurisdictional act [in effect until 1911], 'That the circuit courts of the United States shall have original cognizance, *concurrent with the courts of the several States,* of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, *and arising under the Constitution or laws of the United States.*' August 13, 1888, 25 Stat. 433, c. 866, § 1. *Robb* v. *Connolly,* 111 U. S. 624, 637; *United States* v. *Barnes,* 222 U. S. 513. This is emphasized by the amendment engrafted upon the original act in 1910, to the effect that 'The jurisdiction of the courts of the United States under this Act shall be *concurrent with that of the courts of the several States,* and no case arising under this Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States.' [Court's emphasis above.] *The amendment, as appears by its language, instead of granting jurisdiction to the state courts, presupposes that they already possessed it.*" [Our emphasis here.]

This Court, in *Douglas* v. *N. Y., N. H. & H. R. Co.,* 279 U. S. 377, settled the question that the application of the doctrine of *forum non conveniens* is one of the rules of practice or procedure which a state court may employ in an appropriate case brought under the Federal Employers' Liability Act. In that case plaintiff, a resident of Connecticut, was injured in Connecticut by the defendant; a Connecticut corporation. Plaintiff brought suit under the Act in a state court in New York where the defendant was doing business. The trial court applied the principle of *forum non conveniens* to dismiss the action and the two New York courts of review affirmed the dismissal. (223 App. Div. 782, 248 N. Y. 580.) The case was brought to this Court by certiorari, (278 U. S. 590), and there was squarely presented the question of the right and authority of a state court to refuse to exercise its jurisdiction to retain and dispose of a F. E. L. A. case and to dismiss the case under the doctrine of *forum non conveniens.* This

Court affirmed the action of the New York Court, saying (pp. 387-8):

> "As to the grant of jurisdiction in the Employers' Liability Act, that statute does not purport to require State Courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned. It may very well be that if the Supreme Court of New York were given no discretion, being otherwise competent, it would be subject to a duty. But there is nothing in the Act of Congress that purports to force a duty upon such Courts as against an otherwise valid excuse."

This Court cited in support of its holding, *Second Employers' Liability Cases*, 223 U. S. 1, where this Court held (p. 56):

> "* * * we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, * * *."

The *Douglas* case, which involved F. E. L. A., is directly in point. This Court has repeatedly cited its decision in the *Douglas* case with approval in opinions which involved generally the principle of *forum non conveniens*. *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501; *Herb* v. *Pitcairn*, 324 U. S. 117; *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698.

The holding of the Missouri Supreme Court that the decision in the *Douglas* case rests on a New York statute is without any foundation in fact or law. The statute in question quoted in the Missouri Court opinion denotes nothing one way or the other respecting *forum non conveniens*. In dismissing the F. E. L. A. case there involved, the New York Court applied the historic doctrine of *forum non conveniens* and this Court held in the *Douglas* case that the New York Court had the right and authority on the ground of inconvenience to refuse to hear the F. E. L. A. case and that the exercise of this right and authority did not in any wise conflict with the Federal Constitution or statute.

The New York Court decided the *Douglas* case on the authority of *Murnan* v. *Wabash R. Co.*, 246 N. Y. 244, 158 N. E. 508, which is cited by this Court in the *Gulf Oil* case with approval. The *Murnan* case involved an action begun in the New York state court by a Connecticut plaintiff, based on a claim under the Federal Employers' Liability Act for an accident which occurred in Michigan on defendant's railroad. The trial court applied the principle of *forum non conveniens* to dismiss the case. The Appellate Division reversed and certified the following question of law to the Court of Appeals:

> "(1) Are the courts of this state invested with any discretion to decline jurisdiction of an action brought under the Federal Employers' Liability Act by a non-resident of the state of New York against a foreign railroad corporation, doing business in the state of New York at the time of the commencement of the action?"

The Court of Appeals answered the question in the affirmative, saying (158 N. E. at p. 509):

> "That Congress has undertaken to regulate the exercise of jurisdiction by our courts by making compulsory what in other similar cases is discretionary seems an unreasonable conclusion and a resulting invasion of the powers of our tribunals as heretofore exercised. We conclude that a litigant who brings his action under the federal Employers' Liability Act stands before the court in no different attitude than a litigant who brings his action under the statute of a sister state. He may not be cast out because he is suing under the act of Congress. He may not enforce his rights merely because he is suing under the act."

In *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, this Court, after holding that a state court, having jurisdiction of one of its citizens, could not restrain such citizen from receiving the benefits of the continued prosecution of a F. E. L. A. case in a foreign jurisdiction, took occasion to obviate any confusion of law as to any attempt of Congress

to control state courts in the matter of the practice and procedure in F. E. L. A. cases, saying (p. 704):

> "This is not to say that states cannot control their courts. We do not deal here with the power of Missouri by judicial decision or legislative enactment to regulate the use of its courts generally, as was approved in the *Douglas* or the *Chambers* cases, note 6 *supra*. We are considering another state's power to so control its own citizens that they cannot exercise the Federal privilege of litigating a Federal right in the court of another state."

In *Herb* v. *Pitcairn*, 324 U. S. 117, this Court, in adhering to its former decisions that Congress, in the enactment of Federal Employers' Liability Act, did not undertake to confer jurisdiction upon or regulate the action of state courts, said (p. 120):

> "Whether any case is pending in the Illinois courts is a question to be determined by Illinois law, as interpreted by the Illinois Supreme Court. For as we have said of the Federal Employers' Liability Act, 'we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the Act of Congress and susceptible of adjudication according to the prevailing rules of procedure.' *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, 56-57. 'As to the grant of jurisdiction in the Employers' Liability Act, that statute does not purport to require State Courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned. . . . But there is nothing in the Act of Congress that purports to force a duty upon such courts as against an otherwise valid excuse.' *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 387-88."

Again this Court, in *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, said (p. 504):

> "Even where Federal rights binding on state courts under the Constitution are sought to be adjudged, this Court has sustained state courts in a refusal to entertain a litigation between a nonresident and a foreign corporation, or between two foreign corporations. *Douglas* v. *New York, N. H. & H. R. R. Co.*, 279 U. S. 377; *Anglo-American Provision Co.* v. *Davis Provision Co., No. 1*, 191 U. S. 373."

If it is the law that Section 6 of the Federal Employers' Liability Act does not purport to control the exercise of jurisdiction of state courts in the disposition of F. E. L. A. cases, as this Court clearly holds in the cases cited above, then whether or not state courts, in the trial of F. E. L. A. cases, will apply the doctrine of *forum non conveniens* in the matter of retention or reliquishment of jurisdiction in F. E. L. A. cases is a matter of state policy with which Congress has not undertaken to interfere.

The true situation in the instant case is that Congress, by the enactment of Section 6 of F. E. L. A., conferred jurisdiction on Federal courts to try F. E. L. A. cases and fixed venue in Federal courts, but Congress made no provision with respect to state court jurisdiction or venue. To the contrary, Congress, recognizing that state courts already possessed jurisdiction the moment the cause of action was created by the enactment of the Federal Employers' Liability Act, simply did not legislate upon the subject of either state jurisdiction or venue, such matters being left to the functions and responsibilities of the states. In the instant case, the jurisdiction and venue of Missouri courts for the trial of F. E. L. A. cases derive from the Constitution and legislative acts of Missouri.*

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* Mo. Const. Art. I, § 10.
Mo. Const. Art. I, § 14.
Mo. Const. Art. V, § 14.
Section 14 of the Civil Code of Missouri (Laws of 1943, pp. 353 *et seq.*, l. c. 360, Mo. Rev. Stat. Ann., Section 847.14).

II.

The Missouri Supreme Court erred in its interpretation of the opinions of this Court in the Kepner and Miles cases. Neither of these cases involved the authority of a state court to exercise the right to apply the historic doctrine of *forum non conveniens* in determining whether it should retain jurisdiction of a F. E. L. A. case, and neither the Kepner nor the Miles case decided that a state might not by judicial decision or legislative enactment regulate the use of its courts generally. This Court in the Miles case specifically disclaimed that it was holding that states cannot control their courts.

The Missouri Supreme Court sought no support for its conclusion in the language of Section 6 of the Federal Employers' Liability Act nor in the history of the legislation. Nor did it give any consideration to the questions of state law which were presented by the pleadings nor did it consider or determine the issues of fact presented by the motions to dismiss under the doctrine of *forum non conveniens*. It rested its decision solely upon its interpretation of the opinions of this Court in the *Kepner* and *Miles* cases..

The Missouri Supreme Court made it clear that it was deciding only a federal question. It opened its opinion (*State* v. *Mayfield*, — Mo. —, 224 S. W. 2d 105) by saying that the sole question before it was:

> "May a trial judge of a circuit court of this state exercise his judicial discretion in determining whether to retain or relinquish jurisdiction of a case brought under the Federal Employers' Liability Act when a motion to dismiss on the sole ground of *forum non conveniens* is presented before him for a ruling?" (R. p. 68)

It reached the conclusion that

> "Under the Kepner and Miles cases, supra, the doctrine of *forum non conveniens* is not open to relators in the two Federal Employers' Liability cases in question." (R. p. 75)

It made it clear that the only question it was deciding was a question of federal law, saying:

> "Respondents also contend that under our Constitution and statutes the doctrine of *forum non conveniens* cannot be recognized in Missouri. Since we have already ruled the trial court had no discretion in Federal Employers' Liability cases, it is not necessary to discuss the Missouri law upon that subject." (R. p. 75)

The language used in the opinions of this Court, from which the Missouri Supreme Court quotes and upon which it relies in reaching its conclusion, must be confined to the questions in the case being considered. "It is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the case in which those expressions are used." *Cohens* v. *Virginia*, 6 Wheat. 264, 399; *Osaka Shosen Line* v. *United States*, 300 U. S. 98, 103.

The issue in *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, was so foreign to the issue in this case that it cannot be considered as a ruling precedent. That case involved an attempt to have a state court of Ohio enjoin the prosecution of a F. E. L. A. case in a Federal District Court of New York. This raised the distinct problem of any attempt by a state court to prevent resort to a federal court by a plaintiff who had a clear right under the federal statute to commence and prosecute his action in the federal court selected by him. The question of the venue and procedure of state courts in F. E. L. A. actions, which is not mentioned in the Act and which has always been held to be determined by applicable state law, was not presented and was not discussed. The case certainly did not involve the question of whether a state court has the right and authority to exercise its discretion under the doctrine of *forum non conveniens* to retain or to refuse to exercise its jurisdiction upon considerations of oppressiveness to a defendant out of all proportion to a plaintiff's convenience or upon considerations affecting the court's administrative problems.

Miles v. *Illinois Central R. Co.*, 315 U. S. 698, involved an issue which is more nearly related to the issue in the case at bar for the reason that the F. E. L. A. action which was the subject of the suit was one brought in a state court. However, that case involved not the question of the power of the forum to exercise its discretion in declining to hear a case because of principles of convenience but the power of a state court to enjoin residents of the state from seeking access to a forum in another state. The plaintiff (the secondly appointed personal representative) in the F. E. L. A. action involved in the *Miles* case was a resident of Missouri and he brought his action in the circuit court of the City of St. Louis, Missouri, where he had a clear right to bring it. The defendant railroad sought an injunction in the Chancery Court of Shelby County, Tennessee, to restrain the widow and children of the decedent, who where residents of Tennessee, from furthering the F. E.L.A. action in the Missouri court in any manner or from receiving the proceeds of any judgment entered there. The sole issue in the case was whether the Tennessee court had authority to restrain the effective prosecution of an F. E. L. A. action properly brought in a Missouri court by a Missouri administrator. The question of the authority of the Missouri court to apply the principle of *forum non conveniens* to decline to hear the case, once the parties were properly before it, was not involved in the case. The Missouri court had not exercised its discretion to decline to hear the case, nor was a motion presented by defendant asking it to exercise such discretion. So the issue presented in the case at bar could not have arisen in the *Miles* case. Considering the issues presented for decision in the *Miles* case, the decision in that case cannot be construed as forbidding the application of the principle of *forum non conveniens* in the usual situation where it is applied by the court in which the action is brought and is based upon considerations affecting the administrative problems of that court, a factor not present in that case.

This Court has held that there are two aspects of the historic doctrine of *forum non conveniens*, and that a court

of competent jurisdiction in which an action is commenced may decline to exercise its jurisdiction either (1) upon a clear showing of facts which establish such oppressiveness and vexatiousness to a defendant as to be out of all proportion to plaintiff's convenience, or (2) upon a showing which makes trial in the chosen forum inappropriate because of considerations affecting the court's own administrative problems. *Koster* v. *Lumbermens Mutual Casualty Co.*, 330 U. S. 518, 524.

We are not left in doubt as to the scope of the decision in the *Miles* case. This Court made it clear that it was not determining whether a state court had the authority to exercise its discretion to dismiss, under the doctrine of *forum non conveniens*, a F. E. L. A. action pending before it. The Court divided on the question of the authority of the Tennessee court to enjoin the Tennessee residents from furthering the F. E. L. A. action in the Missouri court, but we think from reading the three opinions filed that the court was unanimous in its conclusion that the Missouri court might have declined to proceed with the trial of a F. E. L. A. action arising out of an accident in Tennessee involving a Tennessee resident. In the opinion of the court by Mr. Justice Reed, in which Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Murphy joined, it is said (315 U. S. 704):

> "This is not to say that states cannot control their courts. We do not deal here with the power of Missouri by judicial decision or legislative enactment to regulate the use of its courts generally, as was approved in the *Douglas* or the *Chambers* cases, note 6 *supra*. We are considering another state's power to so control its own citizens that they cannot exercise the federal privilege of litigating a federal right in the court of another state."

Mr. Justice Jackson, in his separate opinion concurring in the conclusion that the Tennessee court had no right to interfere with the Missouri proceeding, said (315 U. S. 708):

"It is very doubtful if any requirement can be spelled out of the Federal Constitution that a state must furnish a forum for a nonresident plaintiff and a foreign corporation to fight out issues imported from another state where the cause of action arose. It seems unnecessary to decide now whether this litigation could be imposed on the Missouri court, for it appears to have embraced the litigation. Even if Missouri, by reason of its control of its own courts might refuse to open them to such a case, it does not follow that another state may close Missouri's courts to one with a federal cause of action. If Missouri elects to entertain the case, the courts of no other state can obstruct or prevent its exercise of jurisdiction as conferred by the federal statute or its right to obtain evidence and to distribute the proceeds, if any, in accordance with the Federal Employers' Liability Act."

The dissenting opinion by Mr. Justice Frankfurter, in which Mr. Chief Justice Stone and Mr. Justice Roberts and Mr. Justice Byrnes joined, quotes with approval *Douglas v. N. Y., N. H. & H. R. Co.*, 279 U. S. 377, 387, and unequivocally states that state courts have the right to exercise their discretion under the doctrine of *forum non conveniens* to refuse to entertain imported cases.

We submit that the *Miles* case is authority against the conclusion reached by the Missouri Supreme Court.

The Missouri Court also points to language in the opinions of this Court in *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, and in *Ex Parte Collett*, 337 U. S. 55, to the effect that this Court held in the *Miles* and *Kepner* cases that *forum non conveniens* was not available in F. E. L. A. cases. Neither the *Miles* nor the *Kepner* case involved the question of the authority of a state court to exercise its discretion to decline jurisdiction of an F. E. L. A. case pending before it upon considerations of convenience under the historic doctrine of *forum non conveniens*, and so what the Court said in the *Gulf Oil* and the *Collett* cases added nothing to its decisions in the *Miles* and *Kepner* cases. In the *Collett* case the sole question was the applicability of Section

1404(a) of Title 28, U. S. Code, to F. E. L. A. cases. Obviously, when this Court said "Prior to the current revision of Title 28 of the United States Code, *forum non conveniens* was not available in Federal Employers' Liability Act suits," it was referring to Federal courts. This is made clear from what the Court said in relation to the language of Section 6 of the Federal Employers' Liability Act (337 U. S. 61):

> "Since the words selected by Congress for Section 6 denote nothing, one way or the other, respecting *forum non conveniens*, there was no occasion to repeal that section, expressly or impliedly; Congress chose to remove its judicial gloss via another statute."

The "judicial gloss" to which the Court refers is that placed on Section 6 in so far as it relates to proceedings in Federal District Courts by what was said in the *Kepner* case, as this Court points out when it says "The inapplicability of *forum non conveniens* to Liability Act suits derives from the *Kepner* decision." Obviously, the statute which the Court said removed the gloss was Section 1404(a) which refers only to proceedings in Federal District Courts.

Whatever may be said with respect to the language used by this Court in its opinions in the *Kepner* and *Miles* cases with respect to the authority of any court, federal or state, to apply the doctrine of *forum non conveniens* in the disposition of a case pending before it, the opinion in the *Collett* case, which holds that the words selected by Congress for Section 6 denote nothing one way or the other respecting *forum non conveniens*, clearly reveals that this Court has removed whatever "judicial gloss" was placed on Section 6 by the *Kepner* and *Miles* cases. The over-all result of the decision in the *Collett* case is that Federal courts are permitted to transfer F. E. L. A. cases from one federal venue to another, and that State courts are free to exercise their discretion to decline their jurisdiction in a F. E. L. A. case upon considerations of convenience under the doctrine of *forum non conveniens*. We think the reason-

ing of the Court in reaching its decision in the *Collett* case is that Section 6 of the Federal Employers' Liability Act never had the effect of denying to State courts in F. E L. A. cases the right to apply the historic doctrine of *forum non conveniens*.

The decision of the Missouri Supreme Court in the instant case, which holds that a State court is compelled to entertain *all* F. E. L. A. actions which are commenced before it, regardless of the considerations of convenience of the parties and of the court, is as unsound and as far from the intention of the Congress in the adoption of Section 6 of the Federal Employers' Liability Act as was the decision of the Supreme Court of Errors of Connecticut in *Hoxie* v. *New York, N. H. & H. R. Co.*, 82 Conn. 352, 73 Atl. 754, which held that the State courts had no authority to entertain *any* action under the Act. The Court was obliged to review the *Hoxie* case to correct the error committed by the Connecticut court and it is imperative that it take this case to correct the error committed by the Missouri court. A denial of this petition would place a gloss on Section 6 of the Federal Employers' Liability Act which might blind other state courts to surrender their right to protect their own integrity and authority.

III.

Section 6 of the Federal Employers' Liability Act, as construed by the Missouri Supreme Court, invades the fundamental right of the states to regulate and control the venue and procedure of state courts.

We think it is clear that there is nothing in the language of Section 6 of the Federal Employers' Liability Act which furnishes the slightest basis for a conclusion that the Congress undertook to regulate and control the venue and procedure in state courts in actions under the Act. The language of the Act and the history of the legislation exclude any such interpretation. This Court has found nothing in

the Act to indicate any such intention. *Second Employers' Liability Cases*, 223 U. S. 1, 56; *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377, 388.

Federal courts are dependent upon the Constitution and statutes of the United States for their existence, and their jurisdiction, venue and procedure are governed by federal law. State courts are dependent upon the Constitutions and statutes of the respective states for their existence, and their jurisdiction, venue and procedure are governed by state law. There can be no question about these fundamental concepts. There is nothing in Article III of the Constitution of the United States that even suggests that the Congress shall have any authority with respect to state courts and by implication the authority with respect to such courts is reserved to the several states. Lest there be some doubt in the matter, the Tenth Amendment to the Constitution of the United States specifically provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." Had the Congress of the United States attempted to impose upon the courts of the several states the absolute duty to entertain an action under the Federal Employers' Liability Act regardless of the historic right of the state court to apply the doctrine of *forum non conveniens* to protect itself and its citizens from unjust imposition, it would have transcended its powers and such legislation would have been void. The Missouri Supreme Court has placed an interpretation on the Federal Employers' Liability Act which brings it in direct conflict with fundamental concepts of separation of powers between the United States and the several states. The decision is out of tune with American concepts of justice and should be reversed.

IV.

Since Congress, by the enactment of Section 1404(a) of the Judicial Code, declared a general federal public policy favoring the application of the principle of *forum non conveniens* to all civil actions in Federal courts, including Federal Employers' Liability Act actions, no possible inference can now be drawn from F. E. L. A. forbidding the application of that doctrine by state courts to actions under that Act.

While we cannot concede that this Court has held in the *Kepner* and *Miles* cases, or in any other case, that Section 6 of F. E. L. A. inhibits a state court from applying the doctrine of *forum non conveniens,* if this Court has so held, we now present the view that Congress, by the enactment of Section 1404(a), has removed any judicial gloss implying any such Federal inhibition.

This Court held, in *Ex Parte Collett,* 337 U. S. 55, that Section 1404(a) of the Judicial Code was in no wise inconsistent with Section 6 of F. E. L. A.; that Section 6 made no reference one way or the other to the doctrine of *forum non conveniens;* that the theory that Section 6 of F. E. L. A. prevented the application of the doctrine of *forum non conveniens* came not from the Act itself but from the "judicial gloss" placed upon that Section by the decision in the *Kepner* case; that Section 1404(a) did not repeal Section 6 of the F. E. L. A. in whole or in part and need not be construed as a partial repealer thereof; that it merely removed the "judicial gloss" of the *Kepner* case.

While Section 1404(a) of the Judicial Code, of course, is applicable only to Federal district courts, nevertheless it does enounce a general, federal public policy to recognize and apply the doctrine of *forum non conveniens* in all civil actions in Federal district courts, including actions under F. E. L. A.

Having thus removed the "judicial gloss" of the *Kepner* case, Section 1404(a) certainly nullifies any possible impli-

cation which might, prior to the effective date of that Section of the Judicial Code, have been drawn from the *Kepner* case or the *Miles* case that there was any federal policy to be read out of F. E. L. A., or particularly out of Section 6 of that Act, forbidding a state court from applying the doctrine of *forum non conveniens*. Any previous federal hobble on the power of the states to apply that doctrine to F. E. L. A. cases was certainly removed on September 1, 1948, the effective date of Section 1404(a) of the Judicial Code.

It is inconceivable that Congress intended at the same time to authorize all Federal district courts to apply the doctrine of *forum non conveniens* in F. E. L. A. cases by removing the "judicial gloss" of the *Kepner* case, and yet intended to continue a Federal prohibition, deriving from the "judicial gloss" of the *Miles* case, forbidding state courts to apply that doctrine in F. E. L. A. cases under the same facts. It is inescapable that state courts now retain whatever powers they may have under their respective laws to apply the doctrine of *forum non conveniens* in F. E. L. A. cases, free from any Federal prohibition against such application.

V.

The application of the doctrine of *forum non conveniens* in F. E. L. A. cases does not violate the Privileges and Immunities Clause of Article IV, Section 2, of the Constitution of the United States.

Going back for a moment to the decision of this Court in *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377, attention is called to the fact that this Court held in that case that the application of the doctrine of *forum non conveniens* by a state court in a F. E. L. A. case would not violate Article IV, Section 2, of the Constitution of the United States, and this Court did not hold to the contrary in either the *Kepner* or the *Miles* case.

It should be kept in mind, in considering this phase of the subject, that for a state to deny a citizen of another state the right to sue in its courts, is one thing; and, for a state, acting through its courts, to relinquish jurisdiction of a cause upon which a suit has been brought by a citizen of another state, is quite another thing.

Attention should be invited to *McKnett* v. *St. L. & S. F. Ry. Co.*, 292 U. S. 230, 233, which was cited by this Court in the *Miles* case in support of the proposition that for a state court to decline jurisdiction of a F. E. L. A. case would constitute an abridgement of the litigant's rights under Article IV, Section 2, of the Constitution. In that case, this Court properly held that a state may not discriminate against rights created by Federal law, but the Court expressly recognized the validity of the principle laid down in the *Douglas* case that the Constitution does not prevent a state court from declining jurisdiction on the grounds of *forum non conveniens*. We call attention to the expression of the Court on that subject, as follows (292 U. S. 233-234):

> "While Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act, *Douglas v. New York, N. H. & H. R. Co.*, 279 U. S. 377, 387, the Federal Constitution prohibits state courts of general jurisdiction from refusing to do so *solely* because the suit is brought under a federal law." (Our emphasis).

Undoubtedly, this Court, in the *McKnett* case, said, in substance and effect, that a state, through its legislative acts or judgment of its courts, cannot deny to a citizen of another state the right to enter its courts to prosecute a F. E. L. A. case, if such denial amounts to discrimination in favor of its own citizens, as contemplated by Article IV, Section 2, of the Constitution, but once a citizen of another state enters its courts, such state court, under the authority of the *Douglas* case, may relinquish jurisdiction by applying the doctrine of *forum non conveniens* without violating the Privileges and Immunities Clause. This Court said at

p. 233 of the *McKnett* case that under the Federal Employers' Liability Act the jurisdiction of the state court is "invoked according to the rules of procedure prevailing in that court"; and at p. 232 this Court said that a state may determine "the extent to which its courts shall become a forum for the trial of transitory causes of action arising in other states."

The doctrine of *forum non conveniens* bears a peculiar relationship to the Privileges and Immunities Clause. This doctrine does not concern itself with the question of citizenship, but refers to appropriateness of choice of forum, its application depending upon factors of suitableness of the forum. The doctrine may apply to a citizen of the state in which the action is pending as well as to a citizen of another state.

Edward L. Barrett, Jr., in his article on *forum non conveniens*, in 35 Calif. L. Rev., 380, 419, said:

> "The privileges and immunities clause, which once was thought to bar application of the doctrine where the plaintiff was an individual citizen of another state, is clearly not an obstacle today. No other federal constitutional provisions are seriously suggested."

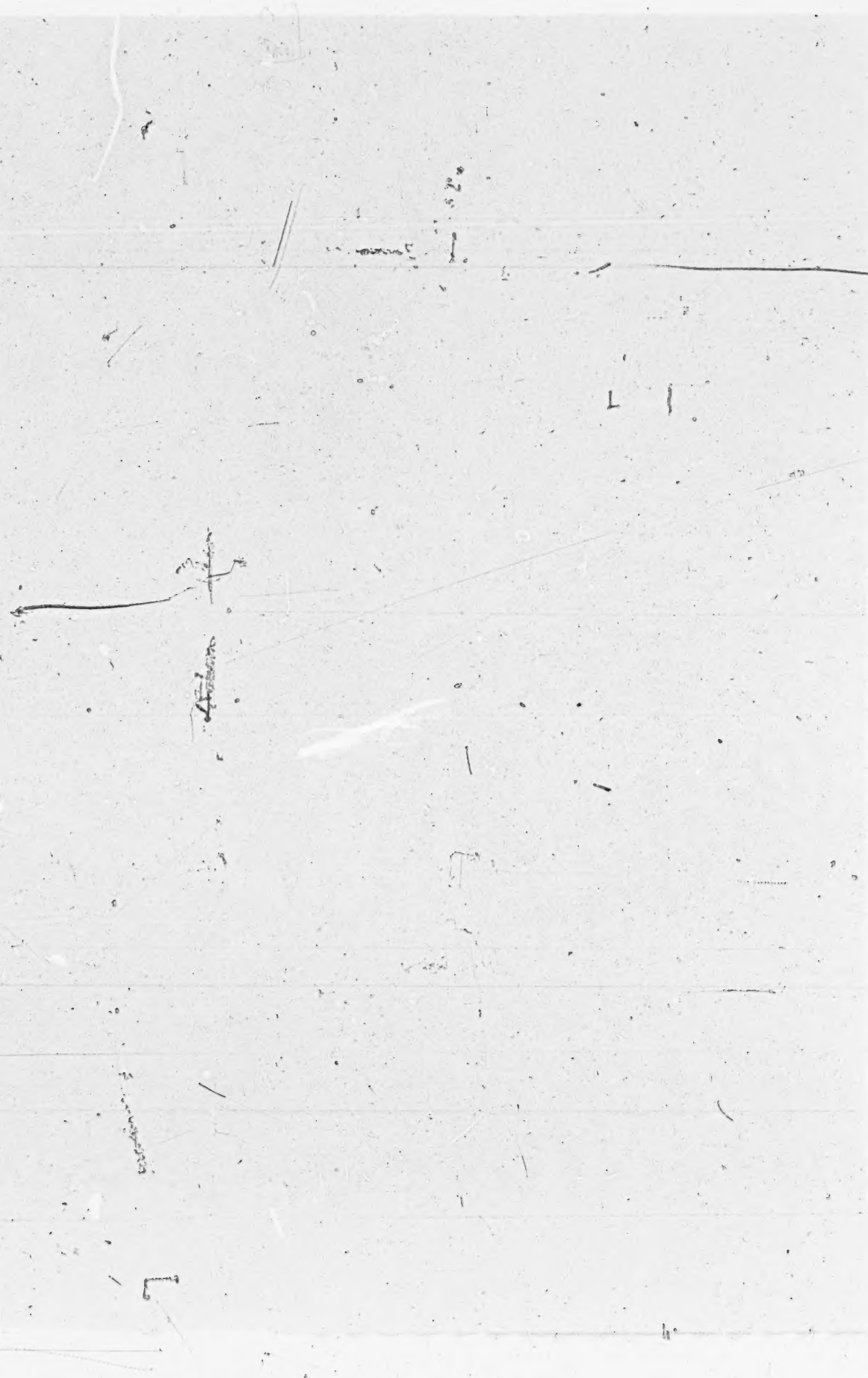
CONCLUSION.

This case involves important factors of public interest. Unless state courts in congested centers can protect themselves from the imposition of imported cases the taxpayers of such communities will be crowded out of their own courts. We think that it is clear that the Congress never intended to deprive state courts of the right and authority to protect themselves from the imposition of imported F. E. L. A. cases and we submit that the Congress had no such authority if it had intended such a result. The courts of New York, Illinois and other populous states are now exercising the right to dismiss F. E. L. A. actions under the doctrine of *forum non conveniens* but the decision of the Missouri Supreme Court in the instant case casts a cloud upon that right. The federal question here involved is sub-

stantial and of wide interest and should be authoritatively determined by this Court.

Respectfully submitted,

SIDNEY S. ALDERMAN,
BRUCE A. CAMPBELL,
FRED W. SCHWARZ,
H. G. HEDRICK,
Southern Railway Building,
15th and K Streets, N.W.,
P. O. Box 1808,
Washington 13, D. C.,
Attorneys for Petitioners,
Southern Railway Company.



NO. 16

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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1950

No. [redacted] 16

STATE OF MISSOURI *ex rel.*
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
a Corporation, *Petitioner,*

v.

DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI, AND BRIEF IN SUPPORT THEREOF.

FLOYD E. THOMPSON,
J. C. GIBSON,
R. S. OUTLAW,
SAM D. PARKER,
Attorneys for Petitioner.

POPPENHUSEN, JOHNSTON, THOMPSON AND RAYMOND,
11 S. La Salle St.,
Chicago, Illinois,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No.

STATE OF MISSOURI *ex rel.*
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
a Corporation, *Petitioner,*

v.

DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

Petitioner, The Atchison, Topeka and Santa Fe Railway Company, a corporation, relator below, respectfully prays that a writ of certiorari issue to the Supreme Court of the State of Missouri to review the final judgment entered in its case No. 41558 under the above title, quashing its alternative writ of mandamus issued

April 13, 1949, and refusing to order the Circuit Court of the City of St. Louis, Missouri, to entertain and determine a motion to dismiss an action brought under the Federal Employers' Liability Act under the principle of *forum non conveniens.*

SUMMARY STATEMENT OF THE CASE.

February 15, 1949, Floyd P. Seachris, a resident of Oklahoma, filed an action under the Federal Employers' Liability Act in the Circuit Court of the City of St. Louis, Missouri, against The Atchison, Topeka and Santa Fe Railway Company, relator below, seeking damages in the amount of $100,000 for alleged personal injuries sustained in the employ of said relator, at Waynoka, Oklahoma. (R. pp. 49-52) Thereafter said relator moved to dismiss on the ground of inappropriate forum within the doctrine of *forum non conveniens,* and on May 4, 1949, the presiding judge denied the motion on the sole ground that he had no jurisdiction to entertain it. (R. p. 58) Thereafter relator below filed its petition for writ of mandamus in the Missouri Supreme Court and that Court on June 16, 1949, issued its alternative writ and in due time respondent below made his return. (R. pp. 60-64) Thereafter the Missouri Supreme Court quashed its alternative writ of mandamus and entered judgment against petitioner upon the theory that Section 6 of the Federal Employers' Liability Act, as construed by this Court in *Baltimore & Ohio R. Co.* v. *Kepner,* 314 U. S. 44, and *Miles* v. *Illinois Central R. Co.,* 315 U. S. 698, compelled the Circuit Court of the City of St. Louis to retain jurisdiction of the F. E. L. A. action and determine it, and denied to that Court the right to consider any element of convenience and to apply the principles and doctrine of *forum non conveniens* in dismissing the action. (R. pp. 67-75.)

THE OPINION BELOW.

The opinion of the Missouri Supreme Court appears at page 67 and following of the transcript filed herewith. The opinion has not yet been published in the official reports of the Missouri Supreme Court, but it is reported in 224 S. W. (2d) 105.

The decision of the Missouri Supreme Court was based solely upon its determination of a question of federal law. (R. pp. 74-75).

JURISDICTION.

The judgment sought to be reviewed was entered October 10, 1949 (R. pp. 67-75); a petition for rehearing was duly filed October 22, 1949 (R. pp. 76-79); and the petition for rehearing was denied November 14, 1949 (R. pp. 79-80).

The jurisdiction of this Court is invoked under Section 1257, Title 28, United States Code, providing for review by this Court by certiorari of decisions of the highest courts of the several States wherein a right or privilege is specifically set up or claimed under the Constitution or Statutes of the United States.

Specifically, this petitioner says:

(1) The Missouri Supreme Court decided a federal question of substance contrary to the decisions of this Court by construing and applying Section 6 of the Federal Employers' Liability Act (Sec. 56, Title 45, U. S. Code) to inhibit State courts from applying the doctrine of *forum non conveniens* in Federal Employers' Liability Act cases.

> *Second Employers' Liability Cases*, 223 U. S. 1;
> *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377;
> *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698;
> *Ex Parte Collett*, 337 U. S. 55.

(2) The Missouri Supreme Court denied to petitioner the equal protection of the law and deprived petitioner of its property without due process of law and abridged its

privileges in violation of Section 1 of Amendment XIV of the Constitution of the United States, in that by denying the writ of mandamus, it did not require the Missouri Circuit Court to exercise its discretion under the doctrine of *forum non conveniens.*

Douglas v. *N. Y., N. H. & H. R. Co.,* 279 U. S. 377.

(3) The Missouri Supreme Court misapplied Section 2 of Article IV of the Constitution of the United States in holding that the application of the doctrine of *forum non conveniens* by the Missouri Circuit Court would violate that provision.

Douglas v. *N. Y., N. H. & H. R. Co.,* 279 U. S. 377;
McKnett v. *St. L. & S. F. Ry. Co.,* 292 U. S. 230.

THE QUESTIONS PRESENTED.

1. Is a state court which has jurisdiction of an action under the Federal Employers' Liability Act denied the right and power, by the terms and provisions of Section 6 of said Act, to exercise its judicial discretion in determining whether to retain or relinquish jurisdiction of the case under the doctrine of *forum non conveniens?*

2. Does Section 6 of the Federal Employers' Liability Act give the plaintiff in an action covered by said Act an absolute right to a trial in any state court in which he elects to commence his action and where the defendant is amenable to service?

3. Is there any provision of the Constitution of the United States which limits the right of a state court to exercise its discretion, under the doctrine of *forum non conveniens,* to retain or relinquish jurisdiction of an action under the Federal Employers' Liability Act otherwise within its jurisdiction?

4. Is there any authority under the Constitution of the United States for the Congress to enact a statute which

would compel a state court of competent jurisdiction to entertain any action under the Federal Employers' Liability Act which is filed with it, regardless of considerations of inconvenience and imposition, and to deny to the state court the right to dismiss the action under the doctrine of *forum non conveniens?*

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Missouri Supreme Court, in holding as a matter of law that Section 6 of the Federal Employers' Liability Act (Sec. 56, Title 45, U. S. Code) places upon the courts of Missouri of competent jurisdiction an absolute duty to hear and determine any action under the Federal Employers' Liability Act brought before it by any plaintiff against any defendant, and that it denies to the Missouri courts the right to apply the doctrine of *forum non conveniens* and dismiss a case imported into its jurisdiction, has decided a federal question of substance directly in conflict with the decision of this Court in

Douglas v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377,

and in a way not in accord with the principles announced by this Court in

Ex Parte Collett, 337 U. S. 55,
Miles v. *Illinois Central R. Co.*, 315 U. S. 698, and
Second Employers' Liability Cases, 223 U. S. 1, and

in a way in direct conflict with decisions on the same question by the Supreme Courts of other states.

Murnan v. *Wabash R. Co.*, 246 N. Y. 244, 158 N. E. 508,
Taylor v. *Southern Ry. Co.*, 350 Ill. 139, 182 N. E. 805.

2. The Missouri Supreme Court denied to The Atchison, Topeka and Santa Fe Railway Company, relator below, the

equal protection of the law and deprived it of its property without due process of law, in violation of Section 1 of Amendment XIV of the Constitution of the United States, by refusing to order and direct the Circuit Court of the City of St. Louis, Missouri, to hear and determine the petition of said relator, invoking the principle and doctrine of *forum non conveniens* to dismiss the action under the Federal Employers' Liability Act filed against it by a non-resident of Missouri.

3. The Missouri Supreme Court misinterpreted and misapplied Section 2 of Article IV of the Constitution of the United States in holding that application of the doctrine of *forum non conveniens* to dismiss his action would deny to the plaintiff in the action brought under the Federal Employers' Liability Act in the Circuit Court of the City of St. Louis, Missouri, arising out of injuries alleged to have been sustained in the State of Tennessee where plaintiff resided, the privilege which Missouri allows to its own citizens to maintain actions under the Act in its courts of competent jurisdiction.

Douglas v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377;
McKnett v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230;
Gulf Oil Corp. v. *Gilbert*, 330 U. S. 501;
Whitney v. *Madden*, 400 Ill. 185, 79 N. E. 2d 593;
Universal Adjustment Corp. v. *Midland Bank*, 281 Mass. 303, 184 N. E. 152.

4. The same sound reason which moved this Court to assign for hearing the petitions for writ of mandamus and for writ of prohibition in *Ex Parte Collett*, 337 U. S. 55, to remove the "judicial gloss" placed on Section 6 of the Federal Employers' Liability Act by language used in the opinion in *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, in relation to the venue of F. E. L. A. cases in federal courts, is present in this case which involves the even thinner gloss placed on said section by language used in the opinion in *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, with respect

to venue and procedure in state courts in F. E. L. A. cases. Whether said Section 6 deprives state courts of their historic right and authority to apply the principle and doctrine of *forum non conveniens* to F. E. L. A. cases is important in the administration of justice because of the direct conflict between the decision of the Supreme Court of the State of Missouri in the instant case and the decisions of the Court of Appeals of the State of New York in *Murnan* v. *Wabash R. Co.*, 246 N. Y. 244, 158 N. E. 508, of the Supreme Court of the State of Illinois in *Taylor* v. *Southern Ry. Co.*, 350 Ill. 139, 182 N. E. 805, and of the courts of other states which recognize and apply the principle and doctrine of *forum non conveniens* in F. E. L. A. cases.

5. The issues involved in this case are of great public importance. The administrative difficulties for courts arising when litigation is piled up in congested centers instead of being handled at its origin and the unjust tax burden and burden of jury duty imposed upon the residents of the jurisdiction into which foreign cases are imported and the denial to such citizens of access to their over-crowded courts are all factors of public interest which are present in this litigation. The factors of private interest here involved are obvious and are great.

Gulf Oil Corp. v. *Gilbert*, 330 U. S. 501;
Douglas v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377;
Universal Adjustment Corp. v. *Midland Bank*, 281 Mass. 303, 184 N. E. 152;
Whitney v. *Madden*, 400 Ill. 185, 79 N. E. 2d 593;
Collard v. *Beach*, 81 N. Y. Supp. 619, 81 App. Div. 582.

6. The decision of the Missouri Supreme Court in this case taken in conjunction with the decision of this court in *Ex Parte Collett*, 337 U. S. 55, has created an incongruous and intolerable situation whereby Federal District Courts may apply the principle of *forum non conveniens* in F. E. L. A. cases but state courts sitting in the same place are

denied the right to apply the same principle under the same facts. This arises from the Missouri court's mistaken interpretation of this Court's decisions construing Section 6 of the Federal Employers' Liability Act. This Court expressly held in *Ex Parte Collett* that Section 6 does not prohibit the application of the doctrine of *forum non conveniens* in such cases.

7. It is respectfully submitted that the situation presented by this record should move this Court to grant certiorari to review the decision of the Missouri Supreme Court.

Rule 38 of Supreme Court Rules, par. 5(a);
Ex Parte Collett, 337 U. S. 55;
Baltimore & Ohio R. Co. v. Kepner, 314 U. S. 44.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *Petitioner.*

By FLOYD E. THOMPSON,
J. C. GIBSON,
R. S. OUTLAW,
SAM D. PARKER.
Its Attorneys.

POPPENHUSEN, JOHNSTON, THOMPSON AND RAYMOND,
11 S. La Salle St.,
Chicago, Illinois,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No.

STATE OF MISSOURI *ex rel.*
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
a Corporation, *Petitioner,*

v.

DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent.*

BRIEF IN SUPPORT OF PETITION.

THE OPINION BELOW.

The opinion of the Missouri Supreme Court appears at pp. 67-75 of the Record. The opinion has not yet been published in official reports of the Missouri Supreme Court but it is reported in 224 S. W. 2d 105.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 1257, Title 28, United States Code. The specific grounds for invoking jurisdiction are set out on pp. 3-4 of the annexed petition.

SUMMARY STATEMENT OF THE CASE.

A summary statement of the case is set out on page 2 of the petition annexed hereto.

THE QUESTIONS PRESENTED.

The questions presented are stated on pages 4-5 of the petition annexed hereto, but for convenience, the questions presented are repeated, as follows:

1. Is a state court which has jurisdiction of an action under the Federal Employers' Liability Act denied the right and power, by the terms and provisions of Section 6 of said Act, to exercise its judicial discretion in determining whether to retain or relinquish jurisdiction of the case under the doctrine of *forum non conveniens?*

2. Does Section 6 of the Federal Employers' Liability Act give the plaintiff in an action covered by said Act an absolute right to a trial in any state court in which he elects to commence his action and where the defendant is amenable to service?

3. Is there any provision of the Constitution of the United States which limits the right of a state court to exercise its discretion, under the doctrine of *forum non conveniens,* to retain or relinquish jurisdiction of an action under the Federal Employers' Liability Act otherwise within its jurisdiction?

4. Is there any authority under the Constitution of the United States for the Congress to enact a statute which would compel a state court of competent jurisdiction to entertain any action under the Federal Employers' Liability Act which is filed with it, regardless of considerations of convenience and imposition, and to deny to the state court the right to dismiss the action under the doctrine of *forum non conveniens?*

SUMMARY OF ARGUMENT.

I. The Congress of the United States, in the enactment of the Federal Employers' Liability Act, did not determine, nor did it purport to determine, the venue or control the procedure of State courts. It dealt only with venue and procedure of Federal courts. *Douglas* v. *N. Y. N. H. & H. R. Co.*, 279 U. S. 377; *Second Employers' Liability Cases*, 223 U. S. 1; *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698; *Herb v. Pitcairn*, 324 U. S. 117; *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501; *Murnan* v. *Wabash R. Co.*, 246 N. Y. 244; *Taylor* v. *Southern Railway Co.*, 350 Ill. 139.

II. The Missouri Supreme Court erred in its interpretation of the opinions of this Court in the *Kepner* and *Miles* cases. Neither of these cases involved the authority of a state court to exercise the right to apply the historic doctrine of *forum non conveniens* in determining whether it should retain jurisdiction of a F. E. L. A. case and neither the *Kepner* nor the *Miles* case decided that a state might not by judicial decision or legislative enactment regulate the use of its courts generally. This court in the *Miles* case specifically disclaimed that it was holding that states cannot control their courts. See cases cited under point I.

III. Section 6 of the Federal Employers' Liability Act, as construed by the Missouri Supreme Court, invades the fundamental right of the states to regulate and control the venue and procedure of state courts.

IV. Since Congress, by the enactment of Section 1404(a) of the Judicial Code, declared a general federal public policy favoring the application of the principle of *forum non conveniens* to all civil actions in Federal courts, including Federal Employers' Liability Act actions, no possible inference can now be drawn from F.E.L.A. forbidding the application of that doctrine by state courts to actions under that Act. *Ex Parte Collett*, 337 U. S. 55.

V. The application of the doctrine of *forum non conveniens* in F.E.L.A. cases does not violate the privileges and immunities clause of Article IV, Section 2, of the Constitution of the United States. *Douglas* v. *N.Y.N.H. & H.R. Co.*, 279 U. S. 377; *McKnett* v. *St.L. & S.F.Ry.Co.*, 292 U. S. 230; *Chambers* v. *B. & O.R.Co.*, 207 U. S. 142.

ARGUMENT.

I.

The Congress of the United States, in the enactment of the Federal Employers' Liability Act, did not determine, nor did it purport to determine, the venue or control the procedure of state courts. It dealt only with venue and procedure of federal courts.

The Federal Employers' Liability Act was enacted by Congress to implement legislation designed to protect the life, health and safety of railroad employees and to remove or limit the defenses of contributory negligence, assumption of risk, and other defenses recognized at common law. The Act gave to federal courts a jurisdiction of a class of tort actions over which state courts had exercised jurisdiction from the earliest days of state and federal courts.

Section 6 (Section 56, Title 45, United States Code) of the Act, which contains the provision relevant to this case, provides as follows:

> "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

Although the Act contains explicit venue provisions for the federal courts, there are no provisions which even purport to determine the venue or the rules of procedure of state courts. These are left to the states to determine. This has been clearly settled by many decisions of this Court, of other federal courts, and of state courts.

The Act, as passed in 1908, made no reference to state courts. No reference was necessary because concurrent jurisdiction of state courts with federal courts over all cases arising under the laws of the United States had already been recognized by the general jurisdictional act of 1888 (25 Stat. 433), then in effect, and had been generally recognized by the decisions of the courts, federal and state. Notwithstanding the well settled principle of concurrent jurisdiction, the Supreme Court of Errors of Connecticut, in 1909, in *Hoxie* v. *N. Y., N. H. & H. R. Co.*, 82 Conn. 352, 73 Atl. 754, held that Congress did not intend to authorize actions under the Act in state courts. To eliminate the possibility of other state courts falling into the same error, the Act was amended in 1910 to include the express recognition of the concurrent jurisdiction of Federal courts with state courts.

The legislative intent apparent from the plain language of the statute is borne out by the legislative history of the amendment. The House Committee on Judiciary, reporting on the amendment, explained that it was being proposed in order that there could be no excuse for courts of other states to follow the error of the Connecticut court, saying:

> "It is clear under the decisions of the Supreme Court of the United States, that this conclusion of the Connecticut court is erroneous. And the reasons recited by the Connecticut court lead to an opposite conclusion from that which the opinion declares upon the subject. But no harm can come, and much injustice and wrong to suitors may be prevented by an express declaration that there is no intent on the part of Congress to confine remedial actions brought under the

employers' liability act to the courts of the United States." H. R. Rep. No. 513, 61st Cong., 2d Sess., p. 7.

When the bill came to the floor of the House, Representative Sterling, who was in charge of the measure, underscored the sole reason for the provision, saying:

> "The second change in the law provides that the federal courts and the state courts shall have concurrent jurisdiction. I am very sure that they have concurrent jurisdiction as the law is now, but on account of a decision of one of the state courts of Connecticut, where one judge declined to take jurisdiction in a case because it was under a federal statute, the committee thought best to expressly provide in the law that the federal courts and the state courts should have concurrent jurisdiction to avoid the possibility of such a construction in the future." 45 Cong. Rec. 2253.

In reply to a question as to the Committee's purpose in recommending this provision, "Did you intend to limit the state courts in any way in this matter?" the answer was, "Oh, no; just the contrary." 45 Cong. Rec. 2254.

With these authoritative explanations, the bill was passed by the House February 23, 1910. (45 Cong. Rec. 2260.) It was then sent to the Senate and there referred to its Judiciary Committee. The report of that Committee repeated the explanation of the provision made by the House Committee. (Sen. Rep. No. 432, 61st Cong., 2d Sess., p. 5.) Senator Borah, who steered the bill in the Senate, made substantially the same explanation of the purpose of the amendment as had been made in the House. (45 Cong. Rec. 3995, 4034.) The bill was passed by the Senate.

The interpretation of the Act and the 1910 amendment was fully stated by this Court in *Second Employers' Liability Cases*, 223 U. S. 1, as follows (p. 56):

> "We are quite unable to assent to the view that the enforcement of the rights which the congressional act creates was originally intended to be restricted to the Federal courts. The act contains nothing which is suggestive of such a restriction, and in this situation the

intention of Congress was reflected by the provision in the general jurisdictional act [in effect until 1911], 'That the circuit courts of the United States shall have original cognizance, *concurrent with the courts of the several States,* of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, *and arising under the Constitution or laws of the United States.*' August 13, 1888, 25 Stat. 433, c. 866, § 1. *Robb* v. *Connolly,* 111 U. S. 624, 637; *United States* v. *Barnes,* 222 U. S. 513. This is emphasized by the amendment engrafted upon the original act in 1910, to the effect that 'The jurisdiction of the courts of the United States under this Act shall be *concurrent with that of the courts of the several States,* and no case arising under this Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States.' [Court's emphasis above.] *The amendment, as appears by its language, instead of granting jurisdiction to the state courts, presupposes that they already possessed it.*" [Our emphasis here.]

This Court, in *Douglas* v. *N. Y., N. H. & H. R. Co.,* 279 U. S. 377, settled the question that the application of the doctrine of *forum non conveniens* is one of the rules of practice or procedure which a state court may employ in an appropriate case brought under the Federal Employers' Liability Act. In that case plaintiff, a resident of Connecticut, was injured in Connecticut by the defendant, a Connecticut corporation. Plaintiff brought suit under the Act in a state court in New York where the defendant was doing business. The trial court applied the principle of *forum non conveniens* to dismiss the action and the two New York courts of review affirmed the dismissal. (223 App. Div. 782, 248 N. Y. 580.) The case was brought to this Court by certiorari, (278 U. S. 590), and there was squarely presented the question of the right and authority of a state court to refuse to exercise its jurisdiction to retain and dispose of a F. E. L. A. case and to dismiss the case under the doctrine of *forum non conveniens.* This

Court affirmed the action of the New York Court, saying (pp. 387-8):

> "As to the grant of jurisdiction in the Employers' Liability Act, that statute does not purport to require State Courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned. It may very well be that if the Supreme Court of New York were given no discretion, being otherwise competent, it would be subject to a duty. But there is nothing in the Act of Congress that purports to force a duty upon such Courts as against an otherwise valid excuse."

This Court cited in support of its holding, *Second Employers' Liability Cases*, 223 U. S. 1, where this Court held (p. 56):

> "* * * we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, * * *."

The *Douglas* case, which involved F. E. L. A., is directly in point. This Court has repeatedly cited its decision in the *Douglas* case with approval in opinions which involved generally the principle of *forum non conveniens*. *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501; *Herb* v. *Pitcairn*, 324 U. S. 117; *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698.

The holding of the Missouri Supreme Court that the decision in the *Douglas* case rests on a New York statute is without any foundation in fact or law. The statute in question quoted in the Missouri Court opinion denotes nothing one way or the other respecting *forum non conveniens*. In dismissing the F. E. L. A. case there involved, the New York Court applied the historic doctrine of *forum non conveniens* and this Court held in the *Douglas* case that the New York Court had the right and authority on the ground of inconvenience to refuse to hear the F. E. L. A. case and that the exercise of this right and authority did not in any wise conflict with the Federal Constitution or statute.

The New York Court decided the *Douglas* case on the authority of *Murnan* v. *Wabash R. Co.*, 246 N. Y. 244, 158 N. E. 508, which is cited by this Court in the *Gulf Oil* case with approval. The *Murnan* case involved an action begun in the New York state court by a Connecticut plaintiff, based on a claim under the Federal Employers' Liability Act for an accident which occurred in Michigan on defendant's railroad. The trial court applied the principle of *forum non conveniens* to dismiss the case. The Appellate Division reversed and certified the following question of law to the Court of Appeals:

> "(1) Are the courts of this state invested with any discretion to decline jurisdiction of an action brought under the Federal Employers' Liability Act by a non-resident of the state of New York against a foreign railroad corporation, doing business in the state of New York at the time of the commencement of the action?"

The Court of Appeals answered the question in the affirmative, saying (158 N. E. at p. 509):

> "That Congress has undertaken to regulate the exercise of jurisdiction by our courts by making compulsory what in other similar cases is discretionary seems an unreasonable conclusion and a resulting invasion of the powers of our tribunals as heretofore exercised. We conclude that a litigant who brings his action under the federal Employers' Liability Act stands before the court in no different attitude than a litigant who brings his action under the statute of a sister state. He may not be cast out because he is suing under the act of Congress. He may not enforce his rights merely because he is suing under the act."

In *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, this Court, after holding that a state court, having jurisdiction of one of its citizens, could not restrain such citizen from receiving the benefits of the continued prosecution of a F. E. L. A. case in a foreign jurisdiction, took occasion to obviate any confusion of law as to any attempt of Congress

to control state courts in the matter of the practice and procedure in F. E. L. A. cases, saying (p. 704):

> "This is not to say that states cannot control their courts. We do not deal here with the power of Missouri by judicial decision or legislative enactment to regulate the use of its courts generally, as was approved in the *Douglas* or the *Chambers* cases, note 6 *supra*. We are considering another state's power to so control its own citizens that they cannot exercise the Federal privilege of litigating a Federal right in the court of another state."

In *Herb* v. *Pitcairn*, 324 U. S. 117, this Court, in adhering to its former decisions that Congress, in the enactment of Federal Employers' Liability Act, did not undertake to confer jurisdiction upon or regulate the action of state courts, said (p. 120):

> "Whether any case is pending in the Illinois courts is a question to be determined by Illinois law, as interpreted by the Illinois Supreme Court. For as we have said of the Federal Employers' Liability Act, 'we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the Act of Congress and susceptible of adjudication according to the prevailing rules of procedure.' *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, 56-57. 'As to the grant of jurisdiction in the Employers' Liability Act, that statute does not purport to require State Courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned. . . . But there is nothing in the Act of Congress that purports to force a duty upon such courts as against an otherwise valid excuse.' *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 387-88."

Again this Court, in *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, said (p. 504):

> "Even where Federal rights binding on state courts under the Constitution are sought to be adjudged, this Court has sustained state courts in a refusal to entertain a litigation between a nonresident and a foreign corporation, or between two foreign corporations. *Douglas* v. *New York, N. H. & H. R. R. Co.*, 279 U. S. 377; *Anglo-American Provision Co.* v. *Davis Provision Co., No. 1*, 191 U. S. 373."

If it is the law that Section 6 of the Federal Employers' Liability Act does not purport to control the exercise of jurisdiction of state courts in the disposition of F. E. L. A. cases, as this Court clearly holds in the cases cited above, then whether or not state courts, in the trial of F. E. L. A. cases, will apply the doctrine of *forum non conveniens* in the matter of retention or reliquishment of jurisdiction in F. E. L. A. cases is a matter of state policy with which Congress has not undertaken to interfere.

The true situation in the instant case is that Congress, by the enactment of Section 6 of F. E. L. A., conferred jurisdiction on Federal courts to try F. E. L. A. cases and fixed venue in Federal courts, but Congress made no provision with respect to state court jurisdiction or venue. To the contrary, Congress, recognizing that state courts already possessed jurisdiction the moment the cause of action was created by the enactment of the Federal Employers' Liability Act, simply did not legislate upon the subject of either state jurisdiction or venue, such matters being left to the functions and responsibilities of the states. In the instant case, the jurisdiction and venue of Missouri courts for the trial of F. E. L. A. cases derive from the Constitution and legislative acts of Missouri.*

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* Mo. Const. Art. I, § 10.
Mo. Const. Art. I, § 14.
Mo. Const. Art. V, § 14.
Section 14 of the Civil Code of Missouri (Laws of 1943, pp. 353 *et seq.*, l. c. 360, Mo. Rev. Stat. Ann., Section 847.14).

II.

The Missouri Supreme Court erred in its interpretation of the opinions of this Court in the Kepner and Miles cases. Neither of these cases involved the authority of a state court to exercise the right to apply the historic doctrine of *forum non conveniens* in determining whether it should retain jurisdiction of a F. E. L. A. case, and neither the Kepner nor the Miles case decided that a state might not by judicial decision or legislative enactment regulate the use of its courts generally. This Court in the Miles case specifically disclaimed that it was holding that states cannot control their courts.

The Missouri Supreme Court sought no support for its conclusion in the language of Section 6 of the Federal Employers' Liability Act nor in the history of the legislation. Nor did it give any consideration to the questions of state law which were presented by the pleadings nor did it consider or determine the issues of fact presented by the motions to dismiss under the doctrine of *forum non conveniens*. It rested its decision solely upon its interpretation of the opinions of this Court in the *Kepner* and *Miles* cases.

The Missouri Supreme Court made it clear that it was deciding only a federal question. It opened its opinion (*State* v. *Mayfield*, — Mo. —, 224 S. W. 2d 105) by saying that the sole question before it was:

> "May a trial judge of a circuit court of this state exercise his judicial discretion in determining whether to retain or relinquish jurisdiction of a case brought under the Federal Employers' Liability Act when a motion to dismiss on the sole ground of *forum non conveniens* is presented before him for a ruling?" (R. p. 68)

It reached the conclusion that

> "Under the Kepner and Miles cases, supra, the doctrine of *forum non conveniens* is not open to relators in the two Federal Employers' Liability cases in question." (R. p. 75)

It made it clear that the only question it was deciding was a question of federal law, saying:

> "Respondents also contend that under our Constitution and statutes the doctrine of *forum non conveniens* cannot be recognized in Missouri. Since we have already ruled the trial court had no discretion in Federal Employers' Liability cases, it is not necessary to discuss the Missouri law upon that subject." (R. p. 75)

The language used in the opinions of this Court, from which the Missouri Supreme Court quotes and upon which it relies in reaching its conclusion, must be confined to the questions in the case being considered. "It is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the case in which those expressions are used." *Cohens* v. *Virginia*, 6 Wheat. 264, 399; *Osaka Shosen Line* v. *United States*, 300 U. S. 98, 103.

The issue in *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, was so foreign to the issue in this case that it cannot be considered as a ruling precedent. That case involved an attempt to have a state court of Ohio enjoin the prosecution of a F. E. L. A. case in a Federal District Court of New York. This raised the distinct problem of any attempt by a state court to prevent resort to a federal court by a plaintiff who had a clear right under the federal statute to commence and prosecute his action in the federal court selected by him. The question of the venue and procedure of state courts in F. E. L. A. actions, which is not mentioned in the Act and which has always been held to be determined by applicable state law, was not presented and was not discussed. The case certainly did not involve the question of whether a state court has the right and authority to exercise its discretion under the doctrine of *forum non conveniens* to retain or to refuse to exercise its jurisdiction upon considerations of oppressiveness to a defendant out of all proportion to a plaintiff's convenience or upon considerations affecting the court's administrative problems.

Miles v. *Illinois Central R. Co.*, 315 U. S. 698, involved an issue which is more nearly related to the issue in the case at bar for the reason that the F. E. L. A. action which was the subject of the suit was one brought in a state court. However, that case involved not the question of the power of the forum to exercise its discretion in declining to hear a case because of principles of convenience but the power of a state court to enjoin residents of the state from seeking access to a forum in another state. The plaintiff (the secondly appointed personal representative) in the F. E. L. A. action involved in the *Miles* case was a resident of Missouri and he brought his action in the circuit court of the City of St. Louis, Missouri, where he had a clear right to bring it. The defendant railroad sought an injunction in the Chancery Court of Shelby County, Tennessee, to restrain the widow and children of the decedent, who where residents of Tennessee, from furthering the F. E.L.A. action in the Missouri court in any manner or from receiving the proceeds of any judgment entered there. The sole issue in the case was whether the Tennessee court had authority to restrain the effective prosecution of an F. E. L. A. action properly brought in a Missouri court by a Missouri administrator. The question of the authority of the Missouri court to apply the principle of *forum non conveniens* to decline to hear the case, once the parties were properly before it, was not involved in the case. The Missouri court had not exercised its discretion to decline to hear the case, nor was a motion presented by defendant asking it to exercise such discretion. So the issue presented in the case at bar could not have arisen in the *Miles* case. Considering the issues presented for decision in the *Miles* case, the decision in that case cannot be construed as forbidding the application of the principle of *forum non conveniens* in the usual situation where it is applied by the court in which the action is brought and is based upon considerations affecting the administrative problems of that court, a factor not present in that case.

This Court has held that there are two aspects of the historic doctrine of *forum non conveniens*, and that a court

of competent jurisdiction in which an action is commenced may decline to exercise its jurisdiction either (1) upon a clear showing of facts which establish such oppressiveness and vexatiousness to a defendant as to be out of all proportion to plaintiff's convenience, or (2) upon a showing which makes trial in the chosen forum inappropriate because of considerations affecting the court's own administrative problems. *Koster* v. *Lumbermens Mutual Casualty Co.*, 330 U. S. 518, 524.

We are not left in doubt as to the scope of the decision in the *Miles* case. This Court made it clear that it was not determining whether a state court had the authority to exercise its discretion to dismiss, under the doctrine of *forum non conveniens*, a F. E. L. A. action pending before it. The Court divided on the question of the authority of the Tennessee court to enjoin the Tennessee residents from furthering the F. E. L. A. action in the Missouri court, but we think from reading the three opinions filed that the court was unanimous in its conclusion that the Missouri court might have declined to proceed with the trial of a F. E. L. A. action arising out of an accident in Tennessee involving a Tennessee resident. In the opinion of the court by Mr. Justice Reed, in which Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Murphy joined, it is said (315 U. S. 704):

> "This is not to say that states cannot control their courts. We do not deal here with the power of Missouri by judicial decision or legislative enactment to regulate the use of its courts generally, as was approved in the *Douglas* or the *Chambers* cases, note 6 *supra*. We are considering another state's power to so control its own citizens that they cannot exercise the federal privilege of litigating a federal right in the court of another state."

Mr. Justice Jackson, in his separate opinion concurring in the conclusion that the Tennessee court had no right to interfere with the Missouri proceeding, said (315 U. S. 708):

> "It is very doubtful if any requirement can be spelled out of the Federal Constitution that a state must furnish a forum for a nonresident plaintiff and a foreign corporation to fight out issues imported from another state where the cause of action arose. It seems unnecessary to decide now whether this litigation could be imposed on the Missouri court, for it appears to have embraced the litigation. Even if Missouri, by reason of its control of its own courts might refuse to open them to such a case, it does not follow that another state may close Missouri's courts to one with a federal cause of action. If Missouri elects to entertain the case, the courts of no other state can obstruct or prevent its exercise of jurisdiction as conferred by the federal statute or its right to obtain evidence and to distribute the proceeds, if any, in accordance with the Federal Employers' Liability Act."

The dissenting opinion by Mr. Justice Frankfurter, in which Mr. Chief Justice Stone and Mr. Justice Roberts and Mr. Justice Byrnes joined, quotes with approval *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377, 387, and unequivocally states that state courts have the right to exercise their discretion under the doctrine of *forum non conveniens* to refuse to entertain imported cases.

We submit that the *Miles* case is authority against the conclusion reached by the Missouri Supreme Court.

The Missouri Court also points to language in the opinions of this Court in *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, and in *Ex Parte Collett*, 337 U. S. 55, to the effect that this Court held in the *Miles* and *Kepner* cases that *forum non conveniens* was not available in F. E. L. A. cases. Neither the *Miles* nor the *Kepner* case involved the question of the authority of a state court to exercise its discretion to decline jurisdiction of an F. E. L. A. case pending before it upon considerations of convenience under the historic doctrine of *forum non conveniens*, and so what the Court said in the *Gulf Oil* and the *Collett* cases added nothing to its decisions in the *Miles* and *Kepner* cases. In the *Collett* case the sole question was the applicability of Section

1404(a) of Title 28, U. S. Code, to F. E. L. A. cases. Obviously, when this Court said "Prior to the current revision of Title 28 of the United States Code, *forum non conveniens* was not available in Federal Employers' Liability Act suits," it was referring to Federal courts. This is made clear from what the Court said in relation to the language of Section 6 of the Federal Employers' Liability Act (337 U. S. 61):

> "Since the words selected by Congress for Section 6 denote nothing, one way or the other, respecting *forum non conveniens*, there was no occasion to repeal that section, expressly or impliedly; Congress chose to remove its judicial gloss via another statute."

The "judicial gloss" to which the Court refers is that placed on Section 6 in so far as it relates to proceedings in Federal District Courts by what was said in the *Kepner* case, as this Court points out when it says "The inapplicability of *forum non conveniens* to Liability Act suits derives from the *Kepner* decision." Obviously, the statute which the Court said removed the gloss was Section 1404(a) which refers only to proceedings in Federal District Courts.

Whatever may be said with respect to the language used by this Court in its opinions in the *Kepner* and *Miles* cases with respect to the authority of any court, federal or state, to apply the doctrine of *forum non conveniens* in the disposition of a case pending before it, the opinion in the *Collett* case, which holds that the words selected by Congress for Section 6 denote nothing one way or the other respecting *forum non conveniens*, clearly reveals that this Court has removed whatever "judicial gloss" was placed on Section 6 by the *Kepner* and *Miles* cases. The over-all result of the decision in the *Collett* case is that Federal courts are permitted to transfer F. E. L. A. cases from one federal venue to another, and that State courts are free to exercise their discretion to decline their jurisdiction in a F. E. L. A. case upon considerations of convenience under the doctrine of *forum non conveniens*. We think the reason-

ing of the Court in reaching its decision in the *Collett* case is that Section 6 of the Federal Employers' Liability Act never had the effect of denying to State courts in F. E L. A. cases the right to apply the historic doctrine of *forum non conveniens.*

The decision of the Missouri Supreme Court in the instant case, which holds that a State court is compelled to entertain *all* F. E. L. A. actions which are commenced before it, regardless of the considerations of convenience of the parties and of the court, is as unsound and as far from the intention of the Congress in the adoption of Section 6 of the Federal Employers' Liability Act as was the decision of the Supreme Court of Errors of Connecticut in *Hoxie* v. *New York, N. H. & H. R. Co.,* 82 Conn. 352, 73 Atl. 754, which held that the State courts had no authority to entertain *any* action under the Act. The Court was obliged to review the *Hoxie* case to correct the error committed by the Connecticut court and it is imperative that it take this case to correct the error committed by the Missouri court. A denial of this petition would place a gloss on Section 6 of the Federal Employers' Liability Act which might blind other state courts to surrender their right to protect their own integrity and authority.

III.

Section 6 of the Federal Employers' Liability Act, as construed by the Missouri Supreme Court, invades the fundamental right of the states to regulate and control the venue and procedure of state courts.

We think it is clear that there is nothing in the language of Section 6 of the Federal Employers' Liability Act which furnishes the slightest basis for a conclusion that the Congress undertook to regulate and control the venue and procedure in state courts in actions under the Act. The language of the Act and the history of the legislation exclude any such interpretation. This Court has found nothing in

the Act to indicate any such intention. *Second Employers' Liability Cases*, 223 U. S. 1, 56; *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377, 388.

Federal courts are dependent upon the Constitution and statutes of the United States for their existence, and their jurisdiction, venue and procedure are governed by federal law. State courts are dependent upon the Constitutions and statutes of the respective states for their existence, and their jurisdiction, venue and procedure are governed by state law. There can be no question about these fundamental concepts. There is nothing in Article III of the Constitution of the United States that even suggests that the Congress shall have any authority with respect to state courts and by implication the authority with respect to such courts is reserved to the several states. Lest there be some doubt in the matter, the Tenth Amendment to the Constitution of the United States specifically provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." Had the Congress of the United States attempted to impose upon the courts of the several states the absolute duty to entertain an action under the Federal Employers' Liability Act regardless of the historic right of the state court to apply the doctrine of *forum non conveniens* to protect itself and its citizens from unjust imposition, it would have transcended its powers and such legislation would have been void. The Missouri Supreme Court has placed an interpretation on the Federal Employers' Liability Act which brings it in direct conflict with fundamental concepts of separation of powers between the United States and the several states. The decision is out of tune with American concepts of justice and should be reversed.

IV.

Since Congress, by the enactment of Section 1404(a) of the Judicial Code, declared a general federal public policy favoring the application of the principle of *forum non conveniens* to all civil actions in Federal courts, including Federal Employers' Liability Act actions, no possible inference can now be drawn from F. E. L. A. forbidding the application of that doctrine by state courts to actions under that Act.

While we cannot concede that this Court has held in the *Kepner* and *Miles* cases, or in any other case, that Section 6 of F. E. L. A. inhibits a state court from applying the doctrine of *forum non conveniens,* if this Court has so held, we now present the view that Congress, by the enactment of Section 1404(a), has removed any judicial gloss implying any such Federal inhibition.

This Court held, in *Ex Parte Collett,* 337 U. S. 55, that Section 1404(a) of the Judicial Code was in no wise inconsistent with Section 6 of F. E. L. A.; that Section 6 made no reference one way or the other to the doctrine of *forum non conveniens;* that the theory that Section 6 of F. E. L. A. prevented the application of the doctrine of *forum non conveniens* came not from the Act itself but from the "judicial gloss" placed upon that Section by the decision in the *Kepner* case; that Section 1404(a) did not repeal Section 6 of the F. E. L. A. in whole or in part and need not be construed as a partial repealer thereof; that it merely removed the "judicial gloss" of the *Kepner* case.

While Section 1404(a) of the Judicial Code, of course, is applicable only to Federal district courts, nevertheless it does enounce a general, federal public policy to recognize and apply the doctrine of *forum non conveniens* in all civil actions in Federal district courts, including actions under F. E. L. A.

Having thus removed the "judicial gloss" of the *Kepner* case, Section 1404(a) certainly nullifies any possible impli-

cation which might, prior to the effective date of that Section of the Judicial Code, have been drawn from the *Kepner* case or the *Miles* case that there was any federal policy to be read out of F. E. L. A., or particularly out of Section 6 of that Act, forbidding a state court from applying the doctrine of *forum non conveniens*. Any previous federal hobble on the power of the states to apply that doctrine to F. E. L. A. cases was certainly removed on September 1, 1948, the effective date of Section 1404(a) of the Judicial Code.

It is inconceivable that Congress intended at the same time to authorize all Federal district courts to apply the doctrine of *forum non conveniens* in F. E. L. A. cases by removing the "judicial gloss" of the *Kepner* case, and yet intended to continue a Federal prohibition, deriving from the "judicial gloss" of the *Miles* case, forbidding state courts to apply that doctrine in F. E. L. A. cases under the same facts. It is inescapable that state courts now retain whatever powers they may have under their respective laws to apply the doctrine of *forum non conveniens* in F. E. L. A. cases, free from any Federal prohibition against such application.

V.

The application of the doctrine of *forum non conveniens* in F. E. L. A. cases does not violate the Privileges and Immunities Clause of Article IV, Section 2, of the Constitution of the United States.

Going back for a moment to the decision of this Court in *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377, attention is called to the fact that this Court held in that case that the application of the doctrine of *forum non conveniens* by a state court in a F. E. L. A. case would not violate Article IV, Section 2, of the Constitution of the United States, and this Court did not hold to the contrary in either the *Kepner* or the *Miles* case.

It should be kept in mind, in considering this phase of the subject, that for a state to deny a citizen of another state the right to sue in its courts, is one thing; and, for a state, acting through its courts, to relinquish jurisdiction of a cause upon which a suit has been brought by a citizen of another state, is quite another thing.

Attention should be invited to *McKnett* v. *St. L. & S. F. Ry. Co.*, 292 U. S. 230, 233, which was cited by this Court in the *Miles* case in support of the proposition that for a state court to decline jurisdiction of a F. E. L. A. case would constitute an abridgement of the litigant's rights under Article IV, Section 2, of the Constitution. In that case, this Court properly held that a state may not discriminate against rights created by Federal law, but the Court expressly recognized the validity of the principle laid down in the *Douglas* case that the Constitution does not prevent a state court from declining jurisdiction on the grounds of *forum non conveniens*. We call attention to the expression of the Court on that subject, as follows (292 U. S. 233-234):

> "While Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act, *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 387, the Federal Constitution prohibits state courts of general jurisdiction from refusing to do so *solely* because the suit is brought under a federal law." (Our emphasis).

Undoubtedly, this Court, in the *McKnett* case, said, in substance and effect, that a state, through its legislative acts or judgment of its courts, cannot deny to a citizen of another state the right to enter its courts to prosecute a F. E. L. A. case, if such denial amounts to discrimination in favor of its own citizens, as contemplated by Article IV, Section 2, of the Constitution, but once a citizen of another state enters its courts, such state court, under the authority of the *Douglas* case, may relinquish jurisdiction by applying the doctrine of *forum non conveniens* without violating the Privileges and Immunities Clause. This Court said at

p. 233 of the *McKnett* case that under the Federal Employers' Liability Act the jurisdiction of the state court is "invoked according to the rules of procedure prevailing in that court"; and at p. 232 this Court said that a state may determine "the extent to which its courts shall become a forum for the trial of transitory causes of action arising in other states."

The doctrine of *forum non conveniens* bears a peculiar relationship to the Privileges and Immunities Clause. This doctrine does not concern itself with the question of citizenship, but refers to appropriateness of choice of forum, its application depending upon factors of suitableness of the forum. The doctrine may apply to a citizen of the state in which the action is pending as well as to a citizen of another state.

Edward L. Barrett, Jr., in his article on *forum non conveniens*, in 35 Calif. L. Rev., 380, 419, said:

> "The privileges and immunities clause, which once was thought to bar application of the doctrine where the plaintiff was an individual citizen of another state, is clearly not an obstacle today. No other federal constitutional provisions are seriously suggested."

CONCLUSION.

This case involves important factors of public interest. Unless state courts in congested centers can protect themselves from the imposition of imported cases the taxpayers of such communities will be crowded out of their own courts. We think that it is clear that the Congress never intended to deprive state courts of the right and authority to protect themselves from the imposition of imported F. E. L. A. cases and we submit that the Congress had no such authority if it had intended such a result. The courts of New York, Illinois and other populous states are now exercising the right to dismiss F. E. L. A. actions under the doctrine of *forum non conveniens* but the decision of the Missouri Supreme Court in the instant case casts a cloud upon that right. The federal question here involved is sub-

stantial and of wide interest and should be authoritatively determined by this Court.

Respectfully submitted,

FLOYD E. THOMPSON,
J. C. GIBSON,
R. S. OUTLAW,
SAM D. PARKER,
Attorneys for Petitioner.

POPPENHUSEN, JOHNSTON, THOMPSON AND RAYMOND,
11 S. La Salle St.,
Chicago, Illinois,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 15

STATE OF MISSOURI, AT THE RELATION OF SOUTHERN RAILWAY COMPANY,

Petitioner,

vs.

ALDO C. MAYFIELD, JUDGE OF THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI, AND HIS SUCCESSORS, AS PRESIDING JUDGE OF SAID COURT,

Respondent.

No. 16

TATE OF MISSOURI, EX REL. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

Petitioner,

vs.

AVID J. MURPHY, JUDGE OF THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI, AND HIS SUCCESSORS, AS PRESIDING JUDGE OF SAID COURT,

Respondent.

REPLY BRIEF.

SIDNEY S. ALDERMAN,
BRUCE A. CAMPBELL,
FRED W. SCHWARZ,
H. G. HEDRICK,
Attorneys for Southern Railway Company.

FLOYD E. THOMPSON,
J. C. GIBSON,
R. S. OUTLAW,
SAM D. PARKER,
Attorneys for The Atchison, Topeka and Santa Fe Railway Company.

SUMMARY INDEX.

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The decision of the Supreme Court of Missouri rests solely and squarely on a federal ground. The Missouri Court pointedly and specifically declined to rest its decision on Missouri law. The only question presented to this Court for decision is whether there is any provision of the Constitution or the statutes of the United States which takes from a state court its right to decline to exercise its jurisdiction of a F. E. L. A. case and to dismiss the case on the ground of inappropriate forum within the doctrine of *forum non conveniens* 2

The Congress of the United States in the enactment of the Federal Employers' Liability Act did not legislate with respect to venue or procedure of state courts, It dealt only with venue and procedure of federal courts. Section 6 of the Act denotes nothing one way or the other respecting *forum non conveniens*..... 6

The Missouri Supreme Court erred in its interpretation of the opinions of this Court in the *Kepner* and *Miles* cases. The forum in which the subject case of those decisions respectively was pending was not called upon to determine whether the exercise of its jurisdiction should be withheld because of matters of convenience to the parties or to other litigants or to the Court, and the doctrine of *forum non conveniens* was not involved in either of the cases 9

Section 6 of the Federal Employers' Liability Act, if it meant what the Missouri Supreme Court says it means, would invade the fundamental right of states to regulate and control the venue and procedure of their courts. There is nothing in the Constitution of the United States which even suggests that Congress has authority to legislate with respect to state courts 12

Since Congress, by enactment of Section 1404(a) of the Judicial Code, declared a general federal public policy favoring the application of *forum non con-*

veniens to all civil actions in federal courts, no possible inference can now be drawn from the language of F. E. L. A. which would forbid the application of that doctrine by state courts to actions under that Act. It is inconceivable that Congress intended at the same time to authorize all federal district courts to apply the doctrine in F. E. L. A. cases by removing the "judicial gloss" of the *Kepner* case by the enactment of Section 1404 (a) of the Judicial Code, and yet intended to continue by its silence a federal prohibition deriving from the "judicial gloss" of the *Miles* case which contains the general expressions on which the Missouri Supreme Court rests its decision 13

The application of the doctrine of *forum non conveniens* in F. E. L. A. cases does not violate the privileges and immunities of Article IV, Section 2, of the Constitution of the United States. Every court, federal and state, which has recognized and applied the doctrine in refusing to retain for trial and decision a case of which it has jurisdiction but which it determined the orderly administration of justice required to be tried in a more appropriate forum, has in effect held that this clause did not prohibit the application of the doctrine. Otherwise the doctrine could never be applied, whatever the circumstances 15

The decision of the Missouri Supreme Court on the questions presented by this record is directly in conflict with the decision of this Court in *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377, and the decisions of the Supreme Courts of New York, Illinois, Ohio, Utah, and other states 18

A plaintiff having a legitimate right to maintain his case in a state court selected by him can and will be protected in that right without denying to the selected forum the right to refuse to retain for trial a case which it is clear was procured and transported from a distant state for illegitimate purposes. The doctrine of *forum non conveniens* is a wholesome doctrine and its proper application does not conflict with any legitimate right or privilege of a plaintiff 22

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REPLY BRIEF.

I.-III.

The Decision of the Supreme Court of Missouri Rests Solely and Squarely on a Federal Ground. The Missouri Court Pointedly and Specifically Declined to Rest Its Decision on Missouri Law.

There was presented to the Supreme Court of Missouri by the petitions for writ of mandamus the question whether the Circuit Court of the City of St. Louis had jurisdiction to entertain motions to dismiss the subject cases on the ground of inappropriate forum within the doctrine of *forum non conveniens*. (Tr. 1-35, 36-64, 68.) The Circuit Court, relying upon *Bright* v. *Wheelock*, 323 Mo. 840, 20 S. W. 2d 684, had ruled it did not have jurisdiction to entertain the motions and had suggested a mandamus proceeding to clarify the Missouri law on the subject. (Tr. 28-30.) The suggestions in support of the petitions for the writ analyzed the Missouri decisions with a view to demonstrating that there was no decision of the Missouri Supreme Court which denied to the Circuit Court the right to decline its jurisdiction under the principles of *forum non conveniens*. (Tr. 7-18, 41-49.) The briefs of the parties in the Supreme Court of Missouri are not in the record, but it may be assumed that the brief of petitioners in the consolidated case amplified their suggestions in support of their petitions, and that the brief of respondents was substantially the same as the brief of respondents filed in this Court. While the Supreme Court of Missouri was asked by the parties to settle the law of Missouri on the subject, it pointedly and specifically declined, saying (Tr. 75):

> "Respondents also contend that under our Constitution and statutes the doctrine of *forum non conveniens* cannot be recognized in Missouri. Since we have already ruled the trial court had no discretion in Fed-

eral Employers' Liability cases, it is not necessary to discuss the Missouri law upon that subject."

We think this language of the Missouri Supreme Court shows that respondents in that Court placed special emphasis upon the proposition that Section 6 of F. E. L. A., as construed by this Court, denied to the Missouri courts the authority to apply the doctrine of *forum non conveniens* in dismissing a F. E. L. A. case, and that their contention that the doctrine of *forum non conveniens* is not recognized in Missouri was a secondary defense to the petitions. If the law of Missouri were as well settled against the contentions of petitioners as respondents now want this Court to believe, it would appear that the Missouri Supreme Court would have refused to entertain the petitions and to issue its alternative writs of mandamus, and if it had taken this step it would have entered a judgment quashing its alternative writs with a memorandum opinion citing its earlier decisions and would not have struggled through a long opinion trying to demonstrate that Section 2, Article IV, of the Constitution of the United States and Section 6 of Federal Employers' Liability Act, as construed by this Court in the *Kepner* and *Miles* cases, barred the Missouri courts from entertaining a motion to dismiss on the ground of inappropriate forum within the doctrine of *forum non conveniens.*

Since the Missouri Supreme Court did not rest its decision on Missouri law, but rested it solely and squarely on federal grounds, we do not consider it appropriate to discuss the law of Missouri. This Court will not determine the law of Missouri but will send the case back to the Missouri courts to determine that law, after it has ruled, if it so rules, that there is no provision of the Federal Constitution or statutes denying to a state court the authority to determine on the merits a motion invoking the doctrine of *forum non conveniens* in F. E. L. A. cases.

However, lest by our silence we might appear to agree with respondents' interpretation of the Missouri decisions, we point out that all of respondents' argument rests on general expressions lifted out of their context. *State, etc.* v. *Grimm,* 239 Mo. 135, 143 S. W. 483, involved an original proceeding in the Supreme Court seeking to prohibit the Circuit Court from further proceeding with the trial on the grounds, (a) that service of process on the defendant was insufficient, and (b) that the courts of Missouri had no jurisdiction of a foreign insurance company in causes of action arising out of business done in other states with citizens of those states. In *Gold Issue M. & M. Co.* v. *Pennsylvania Fire Ins. Co.,* 267 Mo. 524, 184 S. W. 999, the questions were whether the Missouri Court had jurisdiction of the defendant and of the subject matter. In *British-American P. C. Co.* v. *Citizens Gas Co.,* 255 Mo. 1, 164 S. W. 468, the question was as to the right of plaintiff to file his suit in a Missouri court. In *Burg,* v. *Knox* (Mo. 1933), 67 S. W. 2d 96, the question was whether the right of action was barred in Missouri because it was based on a Kansas statute which gave plaintiff a cause of action contrary to the public policy of Missouri. In *Wells* v. *Davis,* 303 Mo. 388, 261 S. W. 58, the question was the legal capacity of plaintiff to sue in a Missouri court. In *State ex rel. Foraker* v. *Hoffman,* 309 Mo. 625, 274 S. W. 362, the motion to dismiss rested upon a contention that a statute was unconstitutional because it was in conflict with the commerce clause of the federal constitution. *Bright* v. *Wheelock,* 323 Mo. 840, 20 S. W. 2d 684, which is the case on which the Circuit Court rested its decision, involved a plea to the jurisdiction of the Missouri court and not a motion like those presented here. Thus it is obvious that none of these cases ruled one way or the other on the authority of a Missouri court to dismiss a case on the ground of inappropriate forum within the doctrine of *forum non conveniens.* Clear evidence of the fact that

Missouri has no such rule are the decisions which hold squarely that a Missouri court may decline to exercise its jurisdiction in a case where it has a clear right to proceed if circumstances justified maintaining the case in a Missouri court. (*Mosely* v. *Empire Gas & Fuel Co.*, 313 Mo. 225, 281 S. W. 762; *State ex rel.* v. *Denton*, 229 Mo. 187, 129 S. W. 709; *Cary* v. *Schmeltz*, 141 Mo. App. 570, 125 S. W. 532; *Maxey* v. *Railey & Brothers Banking Co.* (K. C. Court of Appeals), 57 S. W. 2d 1091.) The privilege of free access to the courts guaranteed by state constitutions must be tempered with reasonable limitations. *Whitney* v. *Madden*, 400 Ill. 185, 79 N. E. 2d 593, 595; *Universal Adjustment Corp.* v. *Midland Bank, Ltd.*, 281 Mass. 303, 184 N. E. 152, 161.

We think it clear from a reading of the opinion of the Supreme Court of Missouri that it purposely reserved its decision on questions of state law and rested its decision on federal grounds only so that this Court would have jurisdiction to settle the disputed question of limitations, if any, placed by federal law upon the freedom of state courts to protect themselves and litigants in their courts from imposition of imported cases by refusing to exercise their jurisdiction under the doctrine of *forum non conveniens*. This question can be authoritatively settled only by this Court, and the Supreme Court of Missouri rendered a public service in resting its decision on federal grounds only so that this case squarely presents for decision the restrictions, if any, of Section 6 of the Federal Employers' Liability Act upon the application of the doctrine of *forum non conveniens* by state courts.

The question presented by this record is a narrow one. It is whether there is any provision of the Constitution or the statutes of the United States which denies to the courts of the several states the right to decline jurisdiction of a case arising under the Federal Employers' Lia-

bility Act under the principles of *forum non conveniens*. No other question is presented by the record.

IV-V.

A.

The Congress of the United States, in the Enactment of the Federal Employers' Liability Act, Did Not Legislate With Respect to the Venue or Procedure of State Courts. It Dealt Only With the Venue and Procedure of Federal Courts.

The briefs of petitioners, appended to their respective petitions for writ of certiorari to review the judgment of the Supreme Court of Missouri entered in the consolidated cases, pointed out (pp. 12-19) that it clearly appears from the language of Section 6 (Sec. 56, Title 45, U. S. Code) of the Federal Employers' Liability Act that Congress did not even purport to determine the venue or the rules of procedure of state courts and that the history of the legislation shows clearly that Congress left to the states the determination of how the state courts would exercise the jurisdiction of F.E.L.A. cases which they already possessed. This interpretation of Section 6 is squarely supported by the decision of this Court in *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377, and respondents have referred to no decision of this Court to the contrary.

This Court held in *Ex Parte Collett*, 337 U. S. 55, 61, that "[the words selected by Congress for § 6 denote nothing, one way or the other, respecting *forum non conveniens*," and if there is anything in the federal statutes which denies to state courts the right to apply the doctrine of *forum non conveniens* to an appropriate case brought under the act it must be found elsewhere than in the language of Section 6. Respondents have referred to no such statute.

It is sometimes said, as the Missouri Court says (Tr. 74), that Congress *conferred* jurisdiction on state courts to entertain cases arising under the act, but the language of the act does not bear that construction. The only jurisdiction conferred by the act is on the federal district courts and the act states that that jurisdiction "shall be concurrent with that of the courts of the several states." The language employed shows clearly that Congress assumed that state courts of general jurisdiction already possessed jurisdiction to entertain such actions, and this Court and state courts have repeatedly held that this appears from the language of the act. (*Second Employers' Liability Cases*, 223 U. S. 1, 56; *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377, 387-8; *Herb* v. *Pitcairn*, 324 U. S. 117, 120; *Murnan* v. *Wabash Ry. Co.*, 246 N. Y. 244, 158 N. E. 508; *Taylor* v. *Southern Ry. Co.*, 350 Ill. 139, 182 N. E. 805; *Loftus* v. *Pennsylvania R. Co.*, 107 Ohio 352, 140 N. E. 94; *Mooney* v. *D. & R. G. W. R. Co*—Utah—, 221 P. 2d 628.) The Supreme Court of Missouri so held in *White* v. *Mo. Pac. Ry. Co.*, 178 S. W. 83; where it said (p. 84) "The amendment did not vest original jurisdiction in state courts. It recognized it as rightfully existing in them."

State courts derive their authority from state law and they exercise a state jurisdiction when they enforce rights created by federal statute. (*Minnesota & St. Louis R. R.* v. *Bombolis*, 241 U. S. 211, 219; *Claflin* v. *Houseman*, 93 U. S. 130, 141; Barnett, The Delegation of Federal Jurisdiction to State Courts, Selected Essays on Constitutional Law, Vol. 3, p. 1202.) The fact that the federal courts are given jurisdiction concurrent with that already possessed by state courts, as is the situation with F. E. L. A. cases, does not change the state court into a federal court nor does it change the usual rules of practice and procedure of the state court exercising its jurisdiction in the enforcement of a right resting on a federal statute.

Inconsistently with its holding in the instant case, the Missouri Supreme Court has held that the authority and procedure of a court is determined by the laws of the state of its creation. (*Mosely* v. *Empire Gas & Fuel Co.*, 313 Mo. 225, 281 S. W. 762, 768.) There is nothing in Article III, Section 1, of the Constitution of the United States, which vests the judicial power of the United States in the Supreme Court and in such inferior courts as Congress may from time to time ordain and establish, or in Article I, Section 8, which grants to Congress the power to constitute tribunals inferior to the Supreme Court and to make all laws which shall be necessary and proper for carrying into execution this power, which suggests that Congress may compel state courts to exercise a jurisdiction which they do not already possess under the constitutions and statutes of their respective states. "The state policy decides whether and to what extent the state will entertain in its courts transitory actions, where the causes of action have arisen in other jurisdictions." *Chambers* v. *B. & O. R. Co.*, 207 U. S. 142, 148-9.

The inherent power of state courts to apply the principles of *forum non conveniens* in order to promote an orderly administration of justice is not a new concept. It has a long history in the courts of Scotland and England as well as in the American courts. (*Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, 507; Blair, the Doctrine of *Forum Non Conveniens* in Anglo-American Law, 29 Columbia Law Review 1; Dainow, The Inappropriate Forum, 29 Illinois Law Review 867; Barrett, The Doctrine of *Forum Non Conveniens*, 35 California Law Review 380; Foster, Place of Trial in Civil Actions, 43 Harvard Law Review 1217.) Among the decisions of state courts which have recognized and applied the doctrine of *forum non conveniens* are *Pietraroia* v. *N. J. & H. R. Ry. & Ferry Co.*, 197 N. Y. 434, 91 N. E. 120; *Jackson & Sons* v. *Lumbermen's Mutual Casualty Co.*, 86 N. H. 341, 168 Atl. 895; *Sielcken* v. *Sorenson*, 111 N. J.

Eq. 44, 161 Atl. 47; *Universal Adjustment Corp.* v. *Midland Bank, Ltd.*, 281 Mass. 303, 184 N. E. 152; *Whitney* v. *Madden*, 400 Ill. 185, 79 N. E. 2d 593; *Mexican National R. Co.* v. *Jackson*, 89 Tex. 107, 33 S. W. 857; *Stewart* v. *Litchenberg*, 148 La. 195, 86 So. 734; *Horner* v. *Pleasant Creek Mining Co.*, 165 Ore. 683, 107 Pac. 2d 989; *Grovey* v. *Washington National Insurance Co.*, 196 Ark. 697, 119 S. W. 2d 503; *Mooney* v. *D. & R. G. W. R. Co.*—Utah—221 P. 2d 628; *Great Western Ry. Co.* v. *Miller*, 19 Mich. 305.

This Court is not called upon to determine whether the State of Missouri shall join the increasing number of states which recognize and apply through their courts the doctrine of *forum non conveniens* in protecting defendants from the oppressiveness and vexation of an inconvenient forum and in protecting their citizens from being crowded out of their courts by cases of non-resident litigants and in protecting the courts in congested centers from the added administrative problems of imported cases, as respondents suggest. (Br. p. 35.) The only question to be determined by this Court is whether there is anything in the language of Section 6 of the Federal Employers' Liability Act which inhibits the courts of Missouri from applying the principle of *forum non conveniens* in order to promote an orderly administration of justice.

B.

The Missouri Supreme Court Erred in Its Interpretation of the Opinions of This Court in the Kepner and Miles Cases.

Respondents have failed in their attempt to find anything in the *decisions* in *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, and *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, which supports the decision of the Supreme Court of Missouri.— They rely on general expressions

lifted out of context. The doctrine of *forum non conveniens* was not involved in either of these cases. The forum in which the case was pending was not called upon to determine whether the exercise of its jurisdiction should be withheld because of matters of convenience to the parties or to other litigants or to the Court. We think, from reading the three opinions filed in the *Miles* case, that it is clear that this Court was unanimous in its conclusion that the Missouri court might have declined to proceed with the trial of a F. E. L. A. action arising out of an accident in Tennessee involving non-residents of Missouri. Whatever "judicial gloss" was added to the language of Section 6 of the act by general expressions in the opinion was removed by the specific disclaimer (315 U. S. 704) that this Court was denying to a Missouri court the right to apply the principles of *forum non conveniens* to cases pending before it.

The Supreme Court of Utah, in the late case of *Mooney v. D. & R. G. W. R. Co.*, 221 Pac. 2d 628, considers and analyzes at length the decisions of this Court (pp. 631-9) and the decisions of state supreme courts (pp. 641-6) upon which respondents here rely. It reaches the conclusion that when the language of the opinions of this Court is limited to the issues involved, this Court has held merely that federal district courts prior to the enactment of Section 1404(a) of the Judicial Code could not dismiss or transfer a F. E. L. A. case on the ground of inconvenience under the doctrine of *forum non conveniens*, and that there was nothing in Section 6 of the Federal Employers' Liability Act or in the decisions of this Court construing it which denied to state courts the right to apply the principles of *forum non conveniens* and dismiss a F. E. L. A. case if the facts of the particular case justified the court in refusing to exercise its jurisdiction on grounds of convenience. Pertinent to the issue here for decision, the Utah Court said (221 Pac. 2d 640):

"A different principle is involved and, we believe, has been announced when a suit is instituted in a state court. In practically every cited case we find statements to the effect that the state concerned determines the limitations of the jurisdiction of its courts and the character of the controversy which it will hear. Each separate state decides whether and to what extent it will entertain in its courts transitory causes of action when they arise in other jurisdictions. It seems that weaving throughout the cases is the principle announced in the Second Employers' Liability Act Cases, *supra*. There the Supreme Court held that when Congress enacted the Federal Employers' Liability Act it did not attempt to enlarge, regulate or control the jurisdiction of the state courts or affect their modes of procedure. All that was intended by that enactment was to confer jurisdiction on the state courts to hear and try the issues if consistent with the practice then in vogue. It would indeed be bringing into imbalance the respective powers of the federal and state governments to permit the Congress to dictate the terms and conditions under which a state court must administer the law. As the majority of the Supreme Court held in *Miles* v. *Illinois Central Railroad Co., supra*, the state court was not required to permit F. E. L. A. litigation under all causes and under all circumstances.

"While the United States Supreme Court has held that one state may not enjoin one of its citizens from prosecuting a cause of action under a F. E. L. A. statute in another state or Federal Court, there are principles other than *forum non conveniens* involved in those holdings. There is the problem that Congress has permitted suit in the courts of all states and there may be some limitation on a state's right to prevent its citizens from taking advantage of rights given by federal statutes when the state entertaining the suit is willing to assume jurisdiction. That question involves principles separate and distinct from the right of a state to attach some conditions to the use of its courts by non-residents."

C.

Section 6 of the Federal Employers' Liability Act, if It Meant What the Missouri Supreme Court Says It Means, Would Invade the Fundamental Right of States to Regulate and Control the Venue and Procedure of State Courts.

We think it clear that the Missouri Supreme Court has placed an interpretation on the Federal Employers' Liability Act which brings it in direct conflict with fundamental concepts of separation of powers between the United States and the several states.

"That Congress has undertaken to regulate the exercise of jurisdiction by our [New York] courts by making compulsory what in other similar cases is discretionary seems an unreasonable conclusion and a resulting invasion of the powers of our tribunals as heretofore exercised." (*Murnan* v. *Wabash R. Co.*, 246 N. Y. 244, 158 N. E. 508, 509.) "It would indeed be bringing into imbalance the respective powers of the federal and state governments to permit the Congress to dictate the terms and conditions under which a state court must administer the law." *Mooney* v. *D. & R. G. W. R. Co.*—Utah—221 P. 2d 628, 640.

Respondents point to nothing in the Constitution of the United States which even suggests that Congress has authority to require state courts to exercise a jurisdiction which they do not already possess or to inhibit state courts from exercising their inherent powers to promote the orderly administration of justice by appropriate action under state practices and procedures.

VI.

Since Congress by Enactment of Section 1404(a) of the Judicial Code Declared a General Federal Public Policy Favoring the Application of the Principle of Forum Non Conveniens to All Civil Actions in Federal Courts, No Possible Inference Can Now Be Drawn from the Language of the Federal Employers' Liability Act Forbidding the Application of That Doctrine by State Courts to Actions Under That Act.

This Court, in *Ex Parte Collett*, 337 U. S. 55, made it clear (p. 61) that "the words selected by Congress for § 6 [of F. E. L. A.] denote nothing, one way or the other, respecting *forum non conveniens*", and, in referring to the application of the principle of *forum non conveniens* in federal courts, pursuant to the authority of Section 1404(a) of the Judicial Code, and in state courts, pursuant to the established state practice, said (p. 60), "An action may still be brought in any court, state or federal, in which it might have been brought previously." The question of whether the selected forum is convenient can never arise if there is an absence of jurisdiction in the forum. The application of the doctrine of *forum non conveniens* always presupposes that there are at least two forums in which the plaintiff can bring his action and in which the defendant is amenable to process. The doctrine merely furnishes the criteria for choice between these forums. *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, 504, 507.

While Section 1404(a) of the Judicial Code of course is applicable only to federal district courts, nevertheless it does announce a general federal public policy to recognize and apply the doctrine of *forum non conveniens* in all civil actions in federal district courts, including actions under the Federal Employers' Liability Act. This Court said in the *Collett* case (337 U. S. 60), "Section 6 of the

Liability Act defines the proper forum; § 1404(a) of the Code deals with the right to transfer an action properly brought. The two sections deal with two separate and distinct problems. Section 1404(a) does not limit or otherwise modify any right granted in § 6 of the Liability Act or elsewhere to bring suit in a particular district." Applying this reasoning to the situation at bar, the fallacy of the reasoning of the Missouri Supreme Court becomes apparent. It confused the right to bring the subject actions in the Circuit Court of the City of St. Louis, Missouri, which derives from the Constitution and statutes of Missouri, with the right in the Circuit Court to decline to hear the case under the principles of *forum non conveniens*, which was inherent in the Court's duty and authority to provide for an orderly administration of justice. The doctrine of *forum non conveniens* does not limit or otherwise modify any right granted by the Missouri Constitution or statutes to *file* the action in the Circuit Court of the City of St. Louis, and the petitioners have never contended that it does.

Assuming that Congress had power to deal with the authority of a state court to exercise its jurisdiction in applying the principle of *forum non conveniens*, it is inconceivable that Congress intended at the same time to authorize all federal district courts to apply the doctrine in F. E. L. A. cases by removing the "judicial gloss" of the *Kepner* case by the enactment of Section 1404(a) of the Judicial Code, and yet intended to continue by its silence a federal prohibition deriving from the "judicial gloss" of the *Miles* case which respondents contend forbids state courts to apply the doctrine under the same facts. This would create an incongruous and intolerable situation by further burdening state courts in congested centers with all of the cases imported into that jurisdiction, whatever the inconvenience to defendants, to other litigants, and to the courts of the selected forum.

As the Superior Court of Los Angeles County, California said in dismissing two F. E. L. A. cases April 28, 1950, (*Jergins* v. *A. T. & S. F. Ry. Co.*, No. 560557 and *Martin* v. *A. T. & S. F. Ry. Co.*, No. 569609, not reported):

> "Congress recognized the injustice of compelling defendants in F. E. L. A. actions to defend in an inconvenient forum, selected by the plaintiff, and permitted a transfer in federal courts when it is in the interest of justice so to do.
>
> "This recognition of the applicability of *forum non conveniens* to F. E. L. A. cases brought in federal courts should, in justice, be extended to cases brought in state courts. Where the reason is the same the rule should be the same.
>
> "If the rule is not applied to actions brought in state courts then a plaintiff could file his action in a federal district court, and upon a motion for transfer on the ground of *forum non conveniens* being filed dismiss the action and file a new action in a state court, in the same district, and thus defeat the purpose of Congress in adopting Section 1404(a)."

VII.

The Application of the Doctrine of Forum Non Conveniens in F. E. L. A. Cases Does Not Violate the Privileges and Immunities Clause of Article IV, Section 2, of the Constitution of the United States.

Every court, federal and state, which has recognized and applied the doctrine of *forum non conveniens* in refusing to retain for trial and decision a case of which it had jurisdiction but which it determined the orderly administration of justice required to be tried in a more appropriate forum, in effect held that the privileges and immunities clause of Article IV, Section 2, of the Constitution of the United States did not prohibit the application of the doctrine. Otherwise, the doctrine could never be applied, whatever the circumstances.

The privileges and immunities clause does not purport to grant rights to citizens of the states nor does it profess to control the power of a state over its own citizens. "Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction." *Slaughter-House Cases*, 16 Wall. 36, 77.

Petitioners do not ask that the courts of Missouri treat citizens of other states any differently than they treat citizens of Missouri. What they ask of the Missouri courts is a holding that any plaintiff, citizen or non-citizen, because of considerations of convenience, be denied the privilege of prosecuting his case in a court in Missouri, which arises out of an occurrence in a distant state, where the facts of the particular case establish such oppressiveness or vexatiousness to a defendant as to be out of all proportion to plaintiff's convenience, or make trial in the chosen forum inappropriate because of considerations affecting the court's own administrative problems, or show that litigants whose cases are properly before the court are denied an early trial because of the congestion created by imported cases. The citizenship of the plaintiffs in the subject cases was not a factor in petitioners' request for a dismissal of the cases by the Circuit Court of the City of St. Louis, and the residence of the plaintiffs was only one of the factors presented for the Court's consideration. More important factors were the convenience of the witnesses necessary for a fair trial of the issues, the greatly increased expense to the defendants, defendants' inability to compel attendance of the witnesses, and the congested docket of the court and the increase in administrative problems by reason of the

presence of cases on the docket which were in all their aspects foreign to the local jurisdiction. (Tr. 24-7, 53-7.)

It is well established that the mere fact that a court has jurisdiction to entertain a case does not require it to exericse its jurisdiction to hear and determine the issues. (*Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, 507; *Massachusetts* v. *Missouri*, 308 U. S. 1, 19; *Rogers* v. *Guaranty Trust Co.*, 288 U. S. 123, 130; *Canada Malting Co.* v. *Paterson Co.*, 285 U. S. 413, 422-3; *Whitney* v. *Madden*, 400 Ill. 185, 189, 79 N. E. 2d, 593; *Universal Adjustment Corp.* v. *Midland Bank, Ltd.*, 281 Mass. 303, 184 N. E. 152; *Pietraroia* v. *N. J. & H. R. Railway & Ferry Co.*, 197 N. Y. 434, 91 N. E. 120; *Sielcken* v. *Sorenson*, 111 N. J. Eq. 44, 161 Atl. 47; *Jackson & Sons* v. *Lumbermen's Mutual Casualty Co.*, 86 N. H. 341, 168 Atl. 895; *Mexican National R. Co.* v. *Jackson*, 89 Tex. 107, 33 S. W. 857; *Stewart* v. *Litchenberg*, 148 La. 195, 86 So. 734; *Horner* v. *Pleasant Creek Mining Co.*, 165 Ore. 683, 107 Pac. 2d 989; *Grovey* v. *Washington National Insurance Co.*, 196 Ark. 697, 119 S. W. 2d 503; *Great Western Ry. Co.* v. *Miller*, 19 Mich. 305.) This is the rule in Missouri. *Mosely* v. *Empire Gas & Fuel Co.*, 313 Mo. 225, 281 S. W. 762.

This Court and state courts have held squarely that a state court having jurisdiction of a case arising under the Federal Employer's Liability Act has the right to refuse to exercise its jurisdiction on grounds of inconvenience. (*Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377; *Murnan* v. *Wabash Ry. Co.*, 246 N. Y. 244, 158 N. E. 508; *Taylor* v. *Southern Ry. Co.*, 350 Ill. 139, 182 N. E. 805; *Loftus* v. *Pennsylvania R. Co.*, 107 Ohio 352, 140 N. E. 94; *Mooney* v. *D. & R. G. W. R. Co.*, Utah 1950, 221 P. 2d 628.) Implicit in these decisions is the holding that to refuse to exercise jurisdiction in a F. E. L. A. case is not a violation of the privileges and immunities clause.

The decision of this Court in the *Douglas* case, which has been re-affirmed and followed right down to the present time, should settle the proposition that the application of the doctrine of *forum non conveniens* by a state court in a F. E. L. A. case does not violate Article IV, Section 2, of the Constitution of the United States. The Supreme Court of Missouri tries to distinguish this case on the ground that the decision rests on a statute of New York. It does nothing of the kind. The decision was reached notwithstanding a statute which provided that "An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only: * * * 4. When a foreign corporation is doing business within this State." It was contended by Douglas that this statute gave him an absolute right to mantain his case against the railroad because it was a foreign corporation doing business in New York and that to deny him the right to maintain his case would violate Article IV, Section 2, of the United States Constitution. This contention was rejected by the New York courts and by this Court. Obviously, the New York statute quoted in the Missouri Supreme Court opinion (Tr. 73), like Section 6 of F. E. L. A., denotes nothing one way or the other respecting *forum non conveniens*. The *Douglas* case is not distinguishable from the instant subject cases and the decision of the Missouri Supreme Court is directly in conflict with the decision of this Court.

The decision of the New York Court in the *Douglas* case, which was affirmed by this Court, followed its decision in *Murnan* v. *Wabash Ry. Co.*, 246 N. Y. 244, 158 N. E. 508, which is cited by this Court with approval in *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501. The *Murnan* case involved an action begun in the New York state court by a Connecticut plaintiff, based on a claim under F. E. L. A., for an accident which occurred in Michigan on

defendant's railroad. The trial court applied the principle of *forum non conveniens* to dismiss the case. The Court of Appeals, in affirming, said (158 N. E. 509):

> "That Congress has undertaken to regulate the exercise of jurisdiction by our courts by making compulsory what in other similar cases is discretionary seems an unreasonable conclusion and a resulting invasion of the powers of our tribunals as heretofore exercised. We conclude that a litigant who brings his action under the federal Employers' Liability Act stands before the court in no different attitude than a litigant who brings his action under the statute of a sister state. He may not be cast out because he is suing under the act of Congress. He may not enforce his rights merely because he is suing under the act."

Among other cases in which it has been held that it is not a denial of the guaranteed privileges and immunities to refuse to entertain jurisdiction on the ground of convenience within the principle of *forum non conveniens* are *Missouri Pacific R. Co.* v. *Clarendon Boat Oar Co., Inc.*, 257 U. S. 533, 535; *Canadian Northern Ry. Co.* v. *Eggen*, 252 U. S. 553, 561; *LaTourette* v. *McMaster*, 248 U. S. 465, 468; *Chambers* v. *Baltimore & Ohio R. Co.*, 207 U. S. 142, 149; *Chemung Canal Bank* v. *Lowery*, 93 U. S. 72, 77; *Whitney* v. *Madden*, 400 Ill. 185, 79 N. E. 2d 593; *Robinson* v. *Oceanic Steam Navigation Co.*, 112 N. Y. 315, 19 N. E. 625; *Loftus* v. *Pennsylvania R. Co.*, 107 Ohio 352, 140 N. E. 94; *Tanner* v. *DeVinney*, 101 Neb. 46, 161 N. W. 1052.

We think a casual reading of the opinion of the Missouri Supreme Court shows that it does not have a proper conception of the application of the principles of *forum non conveniens*. (Tr. 74.) It says that since Missouri permits its citizens to *file* F. E. L. A. cases in its courts, it is a violation of the privileges and immunities clause to deny

the same privilege to citizens of other states. Petitioners have never contended that plaintiffs in the subject cases did not have a right to *file* their cases in the Circuit Court of the City of St. Louis. If the cases were not properly commenced in the Missouri courts, the doctrine of *forum non conveniens* is inapplicable. (*Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, 504.) The inquiry on a motion to dismiss under the doctrine is whether the chosen forum should hear the case when on a balance of conveniences another available forum is more appropriate for the trial, not whether the case was one which could be filed in the chosen forum. Where the doctrine is recognized, "an action may still be brought in any court, state or federal, in which it might have been brought previously." (*Ex parte Collett*, 337 U. S. 55, 60.) Whether jurisdiction shall be retained is a question for the selected forum to decide.

The Utah Supreme Court, in *Mooney* v. *D. & R. G. W. R. Co.*, 221 Pac. 2d 628, answers soundly the illogical reasoning of the Missouri Supreme Court (Tr. 74) that since Missouri allows its citizens to maintain F. E. L. A. cases in its courts it must allow citizens of other states the same privilege. As the Utah court says (p. 646) there would be force to the contention if in any of the cases the doctrine of *forum non conveniens* had been in issue and it had been decided that it could not be applied in the case of a citizen of the state whatever the circumstances. But as the Utah court points out, there is no such decision in Utah, and we point out that neither the Missouri Supreme Court nor respondents cite any Missouri case so holding. Petitioners' motions were in no sense based on the citizenship of the plaintiffs in the subject cases and the respondents did not refuse to entertain the motions on the ground of denial of equal privileges. The refusal of the Supreme Court of Missouri to require the Circuit Court to entertain the motion of petitioners on the merits was based

solely on the ground that Section 6 of F. E. L. A., as construed by this Court, inhibited state courts from declining to exercise its jurisdiction in a F. E. L. A. case. (Tr. 73, 75.) When that erroneously assumed barrier is removed and the Missouri courts come to apply Missouri law to the determination of the motions to dismiss, it must be assumed they will apply it consistently with constitutional limitations, but there is no constitutional provision which renders state courts impotent to do justice under the facts of a particular case.

We quote the answer of the Utah Supreme Court to the illogical contention that a state court must entertain every F. E. L. A. case imported into its jurisdiction because it has not heretofore applied the doctrine of *forum non conveniens* to dismiss one which the special circumstances show should be tried in the forum of its origin (221 Pac. 2d 646):

> "It would be necessary to sustain plaintiff's contention if we were to hold that the doctrine was applicable only in cases arising under federal acts or if we were to discriminate against him by refusing to enforce a right granted by a federal statute. Furthermore, the same complaint would be legitimate if we did not accord to plaintiff substantially the same access to our courts we accord our own citizens. However, we are of the opinion that if the doctrine is applied in this cause and applied in all instances when a cause of action arises out of the state and the residence of one party or all parties makes the doctrine applicable, we do not run afoul of the federal constitutional provisions under such an interpretation and procedure. We accord to every litigant the right to institute a suit in the courts of this state subject to the right of the other party to enter a plea of *forum non conveniens* when the cause of action arises outside the jurisdiction of this state. It may be conceded that the doctrine may have little or no application if one of the parties resides in this state, but because

one litigant may not be able to sufficiently establish inconvenience does not render the application of the principle in other cases unconstitutional."

The doctrine of *forum non conveniens* does not concern itself with the question of the citizenship of the plaintiff but refers to the suitability of the forum chosen by the plaintiff where he has a choice of forum. The doctrine may apply to a citizen of a state in which the action is pending as well as to a citizen of another state. It is not the privilege of any litigant, citizen or non-citizen, to choose an inappropriate forum and interfere with the orderly administration of justice, and there is nothing in the Constitution of the United States which protects him in an attempt to transport his cause of action to a distant forum and to maintain it there for illegitimate purposes.

Conclusion.

A plaintiff having a legitimate right to maintain his case in a state court selected by him can and will be protected in that right without denying to the selected forum the right to refuse to retain for trial a case which it is clear was procured and transported from a distant state for illegitimate purposes. The doctrine of *forum non conveniens* is a wholesome doctrine and its proper application does not conflict with any legitimate right or privilege of a plaintiff.

Whether the state courts are denied by applicable federal law the right to apply the doctrine in an appropriate case is the issue to be decided by this Court in this case. Whether the doctrine shall be applied by the Circuit Court of the City of St. Louis and the subject cases dismissed, when it has been freed from the restraint which the Supreme Court of Missouri has mistakenly concluded is imposed by federal statute, is for that Court to decide

under the law of Missouri as finally determined by the Supreme Court of that state.

The Supreme Court of Missouri has erroneously held that Section 6 of the Federal Employers' Liability Act prohibits a state court from applying the doctrine of *forum non conveniens* to dismiss an imported case brought under that Act and its judgment should be reversed.

Respectfully submitted,

SIDNEY S. ALDERMAN,
BRUCE A. CAMPBELL,
FRED W. SCHWARZ,
H. G. HEDRICK,
Attorneys for Southern Railway Company.

FLOYD E. THOMPSON,
J. C. GIBSON,
R. S. OUTLAW,
SAM D. PARKER,
Attorneys for The Atchison, Topeka and Santa Fe Railway Company.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1950.
Nos. 15 and 16 (Consolidated).

STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation,
Petitioner,
v.
WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court,
Respondent.
No. 15.

STATE OF MISSOURI ex rel. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation,
Petitioner,
v.
DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court,
Respondent.
No. 16.

BRIEF FOR RESPONDENTS.

HARVEY B. COX,
JOSEPH B. McGLYNN,
ROBERTS P. ELAM,
Attorneys for Respondents.

Law Printing Co., 415 North Eighth Street, CEntral 4477

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1950.
Nos. 15 and 16 (Consolidated).

STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation, Petitioner, v. WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, Respondent.	No. 15.
STATE OF MISSOURI ex rel. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation, Petitioner, v. DAVID J. MURPHY, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, Respondent.	No. 16.

BRIEF FOR RESPONDENTS.

STATEMENT.

The above styled cases are here on writs of certiorari awarded by this Court on March 27, 1950 (R. 80, 81), to review the final judgment, opinion and decision of the

Supreme Court of Missouri entered and rendered in two consolidated causes (R. 65) on October 10, 1949 (R. 67-76). The two cases involve parallel sets of facts and identical questions of law, and are briefed together here under a single cover, but with separate statements of fact containing appropriate page references to the consolidated printed record in this Court.

Opinions of the Courts Below.

In case No. 15, the trial court filed a memorandum opinion which appears at pages 28-30 of the printed record here, but not otherwise reported. In case No. 16, no opinion was rendered by the trial court.

The opinion of the Supreme Court of Missouri, in both cases, which were consolidated in that court, is reported as **State ex rel. Southern Ry. Co. v. Mayfield, Judge,** and **State ex rel. Atchison, T. & S. F. Ry. Co. v. Murphy, Judge,** 359 Mo. 827, 224 S. W. 2d 105, and appears at pages 67-75 of the printed record here.

Summary Statement of the Cases.

We find ourselves unable to accept petitioners' statements of the cases, insofar as such statements undertake to state the theories of the courts below, and, accordingly, make a statement of our own.

In case No. 15, Lelia M. Blevins, who had been appointed administratrix of the estate of Roderick M. Blevins by a Tennessee court, filed an action on October 13, 1948, against the Southern Railway Company, a Virginia corporation, licensed to do business in Missouri (R. 1), relator below, in the Circuit Court of the City of St. Louis, Missouri, seeking damages of $100,000.00 under the Federal Employers' Liability Act (45 U. S. C. A., §§51-60) on account of the death of said Roderick E. Blevins while in

the employ of said relator (R. 2, 19-24, 31, 32-33). Both the administratrix and the deceased were residents of the State of Tennessee, and the fatal injury to and death of the deceased occurred in Tennessee (R. 2, 25). In due course, on November 13, 1948, said relator moved to dismiss on the ground of inappropriate forum within the doctrine of forum non conveniens (R. 2, 24-27); and on March 14, 1949, the presiding judge of said Circuit Court denied the motion on the sole ground that he had no jurisdiction or discretion to entertain or grant it (R. 2, 28), and filed a memorandum opinion predicating his decision upon the Missouri constitutional and statutory provisions as construed by the Missouri decisions (R. 28-30). On March 31, 1949, relator below filed in the Supreme Court of Missouri its petition for a writ of mandamus to compel the presiding judge of said Circuit Court to exercise jurisdiction over, and to rule upon the merits of, said motion to dismiss (R. 1-30), and on April 11, 1949, the Supreme Court of Missouri issued its alternative writ of mandamus (R. 30-31), to which the respondent below duly made his return (R. 31-35).

In case No. 16, Floyd P. Seachris, a citizen and resident of the State of Oklahoma (R. 53), filed an action on February 15, 1949, against the Atchison, Topeka & Santa Fe Railway Company, a Kansas corporation, licensed to do business in Missouri (R. 36), relator below, in the Circuit Court of the City of St. Louis, Missouri, seeking damages of $100,000.00 under the Federal Employers' Liability Act (45 U. S. C. A., §§51-60) for personal injuries sustained by him while in the employ of said relator company at Waynoka, Oklahoma (R. 37, 49-52). In due course, on April 25, 1949, said relator company moved to dismiss on the ground of inappropriate forum within the doctrine of forum non conveniens (R. 37, 53-57), and on May 4, 1949, the presiding judge of said Circuit Court—being the same trial court judge as in case No. 15, the Hon.

William L. Mason, now deceased—denied the motion on the sole ground that he had no jurisdiction or discretion to entertain or grant it (R. 37, 58), but he filed no opinion. Thereafter, relator below filed in the Supreme Court of Missouri its petition for a writ of mandamus to compel the presiding judge of said Circuit Court to exercise jurisdiction over, and to rule upon the merits of, said motion to dismiss (R. 36-58), and on June 13, 1949, the Supreme Court of Missouri issued its alternative writ of mandamus (R. 58-59), to which respondent below duly made his return (R. 60-64).

Thereafter, the Supreme Court of Missouri, upon motion of the two relators below (R. 65), consolidated the two mandamus proceedings (R. 66), which were then heard together (R. 66).

Thereafter, the Supreme Court of Missouri entered judgment quashing its alternative writs of mandamus in both cases (R. 76), predicating such judgment upon an opinion (R. 67-75; reported at 359 Mo. 827, and 224 S. W. 2d 105).

Basis for the Decision Below.

In these cases, the Supreme Court of Missouri clearly and unequivocally held and ruled that:

1. The Federal Employers' Liability Act does not compel the courts of Missouri to take jurisdiction of actions under that act, but it empowers them to do so (R. 74; 224 S. W. 2d, l. c. 110).

2. Missouri permits its citizens to maintain in its court actions under the Federal Employers' Liability Act (45 U. S. C. A., §§ 51-60), irrespective of where the cause of action may have arisen and irrespective of consideration of matters of expense, inconvenience or harassment (R. 74; 224 S. W. 2d, l. c. 110).

3. Under the **Miles** case (315 U. S. 698) and the **Kepner** case (314 U. S. 44) the doctrine of forum non conveniens is not applicable to actions brought under the Federal Employers' Liability Act in state courts (R. 73; 224 S. W. 2d, l. c. 109; R. 74; 224 S. W. 2d, l. c. 111).

4. The enactment of Section 1404 (a) of the Judicial Code [28 U. S. C. A., § 1404 (a)] by the Act of June 25, 1948, c. 646, 62 Stat. 869 et seq., did not change the law announced in the **Miles** and **Kepner** cases as aforesaid (R. 70; 224 S. W. 2d, l. c. 108).

5. Missouri has no statute which gives the courts of that state discretionary power to dismiss an action brought by a non-resident as distinguished from a citizen of that state (R. 73-74; 224 S. W. 2d, l. c. 110).

6. Since Missouri allows its residents to bring and maintain in its courts actions under the Federal Employers' Liability Act, to not allow citizens of other states the same right, by the application of a theory of "forum non conveniens," would violate the Privileges and Immunities clause of Article IV, Section 2, of the Constitution of the United States (R. 74-75; 224 S. W. 2d, l. c. 110).

7. The doctrine of forum non conveniens was not open to relators below (petitioners here) in the two Federal Employers' Liability Act cases in the Missouri circuit court (R. 75; 224 S. W. 2d, l. c. 111).

8. The Missouri circuit court had, and had correctly ruled that it had, no jurisdiction or discretion to hear or determine the motions to dismiss, grounded upon forum non conveniens, in the cases pending in such circuit court (R. 75; 224 S. W. 2d, l. c. 111).

QUESTIONS PRESENTED.

The petitioners, at pages 4-5 and 10 of their briefs, have stated four questions which they consider to be involved here. Because we believe the questions posed by petitioners, which are so framed as to require negative answers, and which erroneously assume that Section 6 of the Federal Employers' Liability Act denotes something respecting forum non conveniens[1] and that all state courts have a discretion to apply the doctrine of forum non conveniens, are not the real questions here involved, we state the questions which we believe to be here presented, as follows:

1. Does this Court have jurisdiction to review a decision of the highest court of a state based, essentially, upon a ruling that the local laws of the state divest the courts of such state of any jurisdiction or discretion to decline to hear and determine transitory causes of action, by whomsoever brought, without consideration of matters of expense, inconvenience and harassment, and irrespective of whether arising under state or federal law?

2. Does this Court have jurisdiction to review a decision of the highest court of a state based, independently and adequately, upon a question of the limits of the jurisdiction of the courts of such state?

3. Does a state court, when its ordinary jurisdiction is appropriate and adequate, and where the particular state has no statute giving its courts discretion to retain or relinquish jurisdiction of transitory actions upon considerations of expense, inconvenience and harassment, but, on the contrary, has a policy established by its constitutional and statutory provisions to permit access to its

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1 This Court, in Ex parte Collett, 337 U. S. 55, 61, clearly stated that "* * * the words selected by Congress for § 6 denote nothing, one way or the other, respecting forum non conveniens, * * *."

courts by all persons for such actions, have authority to apply the doctrine of forum non conveniens in Federal Employers' Liability Act cases brought in such state court?

4. Has the established doctrine of this Court, that forum non conveniens is not applicable to Federal Employers' Liability cases in state courts, been in any wise modified by the revision of the Judicial Code by the Act of June 25, 1948, c. 646, 62 Stat. 869, et seq.?

5. When, under local laws, a state permits its citizens to maintain its courts' actions under the Federal Employers' Liability Act, irrespective of questions of expense, inconvenience or harassment, can the courts of such state deny the same right to non-citizens upon the theory of forum non conveniens?

SUMMARY OF THE ARGUMENT.

I.

To give this Court jurisdiction of these cases, it must appear that there is a federal question involved which is decisive, and, if the decision of the Supreme Court of Missouri rests upon a non-federal ground, which independently and adequately supports the State court's judgment, this Court will not exercise jurisdiction.

Kalb v. Feuerstein, 308 U. S. 433, 60 S. Ct. 343, 84 L. Ed. 370;

Honeyman v. Hanan, 300 U. S. 14, 57 S. Ct. 350, 81 L. Ed. 476;

Lynch v. New York ex rel. Pierson, 293 U. S. 52, 55 S. Ct. 16, 79 L. Ed. 191;

Enterprise Irrigation Dist. v. Farmers Mutual Canal Co., 243 U. S. 157, 37 S. Ct. 318, 61 L. Ed. 644;

West Chicago Street R. Co. v. People of Illinois ex rel., 201 U. S. 506, 26 S. Ct. 518, 50 L. Ed. 845;

Chicago, B. & Q. R. Co. v. State of Illinois ex rel., 200 U. S. 561, 26 S. Ct. 341, 50 L. Ed. 596;

Brown v. Atwell, 92 U. S. 327, 23 L. Ed. 511;

Murdock v. City of Memphis, 20 Wall. 590, 87 U. S. 590, 22 L. Ed. 429;

Klinger v. State of Missouri, 13 Wall. 257, 80 U. S. 257, 20 L. Ed. 635.

II.

The decision of the Supreme Court of Missouri here sought to be reviewed rests upon a non-federal ground which independently and adequately supports the State court judgment. That Court ruled essentially that, under the constitutional and statutory provisions of that State, the courts of such State were without discretion to refuse

to entertain jurisdiction, upon consideration of expense, inconvenience or harassment (forum non conveniens), of actions based upon a transitory causes of action—including actions under the Federal Employers' Liability Act—brought by a citizen of that State, and, therefore, were without such discretion respecting similar actions brought by others.

State ex rel. Southern R. Co. v. Mayfield, 359 Mo. 827, 224 S. W. 2d 105, 110 [4];
Printed Record in this cause, pp. 74-75;
Authorities cited under Point I, supra;
Art. 1, Sec. 14, Constitution of Missouri, 1945;
Art. 1, Sec. 10, Constitution of Missouri, 1945;
Sec. 14, Civil Code of Missouri, 1943;
Laws of Mo., 1943, p. 353, 360 (Mo. R. S. A., § 847.14);
State ex rel. Pacific Mutual Life Ins. Co. v. Grimm, 239 Mo. 135, 143 S. W. 483;
Gold Issue Mining & Milling Co. v. Pennsylvania Fire Ins. Co., 267 Mo. 524, 184 S. W. 999;
British-American Portland Cement Co. v. Citizens Gas Co., 255 Mo. 1, 164 S. W. 468;
Burg v. Knox, Mo. Sup., 67 S. W. 2d 96;
Wells v. Davis, 303 Mo. 388, 261 S. W. 58;
State ex rel. Foraker v. Hoffman, 309 Mo. 625, 274 S. W. 362;
Shaw v. Chicago & A. R. Co., 314 Mo. 123, 282 S. W. 416;
Bright v. Wheelock, 323 Mo. 840, 20 S. W. 2d 684;
Ex parte State ex rel. Southern Ry. Co., Ala. Sup., 47 So. 2d 249.

III.

The decision of the Supreme Court of Missouri does no more than to confirm a decision of a Missouri circuit court to the effect that such latter court was without jurisdiction of certain pre-trial motions to dismiss. This Court is

without jurisdiction to review the holdings of the highest court of a State determining the limits of the jurisdiction of the courts of such State.

Taylor v. St. Louis, I. M. & S. R. Co., 210 U. S. 281, 285, 28 S. Ct. 616, 52 L. Ed. 1061;
Chambers v. Baltimore & O. R. Co., 207 U. S. 142, 28 S. Ct. 34, 52 L. Ed. 143;
John v. Paullin, 231 U. S. 583, 34 S. Ct. 178, 58 L. Ed. 381.

IV.

The Supreme Court of Missouri did not err in its interpretation of the **Miles** and **Kepner** cases. Those cases, earlier cases decided by this Court, and recent legislative history, showing an intent on the part of Congress to continue to assure a hearing in the state courts in such cases, conclusively demonstrate the correctness of the holding of the Supreme Court of Missouri that matters of expense, inconvenience or harassment cannot frustrate the privilege of selection of forum in the state courts given by the Federal Employers' Liability Act to an injured employee —that is to say, that the doctrine of forum non conveniens is not applicable to actions brought under that act in state courts when their jurisdiction, as prescribed by local laws, is adequate to the occasion.

Miles v. Illinois Central R. Co., 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129;
Kepner v. Baltimore & O. R. Co., 314 U. S. 44, 62 S. Ct. 6, 86 L. Ed. 28;
Mondou v. New York, N. H. & H. R. Co., 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327;
McKnett v. St. Louis & S. F. R. Co., 292 U. S. 230, 54 S. Ct. 690, 78 L. Ed. 1227;
Hoffman v. State ex rel. Foraker, 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905;

Denver & R. G. W. R. Co. v. Terte, 284 U. S. 284, 52 S. Ct. 152, 76 L. Ed. 515;
Act of June 25, 1948, c. 646, 62 Stat. 869 et seq.;
28 U. S. C. A. §1404 (a);
Act of June 25, 1948, c. 646, §18, 62 Stat. 989;
28 U. S. C. A. §1445 (a);
Gulf Oil Corporation v. Gilbert, 330 U. S. 501, 67 S. Ct. 839, 91 L. Ed. 1055;
Ex parte Collett, 337 U. S. 55, 69 S. Ct. 944, 93 L. Ed.

V.

The Supreme Court of Missouri, in its opinion below, did not construe Section 6 of the Federal Employers' Liability Act so as to invade the fundamental right of the states to regulate and control the venue and procedure of their courts. On the contrary, it made no mention of such Section 6, and it specifically held that the Federal Employers' Liability Act did not compel, but permitted, the courts of the states to take jurisdiction of actions under that act.

State ex rel. Southern R. Co. v. Mayfield, 359 Mo. 827, 224 S. W. 2d 105, 110 [4];
Printed record in these causes, p. 74.

VI.

The enactment of Section 1404 (a) of the Judicial Code, in the light of the entire Act of June 25, 1948, c. 646, 62 Stat. 869 et seq., does not demonstrate any general federal policy to favor the application of forum non conveniens to Federal Employers' Liability cases in state courts. On the contrary, when that entire act is considered, and particularly Section 18 thereof and Section 1445 (a) of the Judicial Code, the general federal policy is demonstrated to be to continue in effect the doctrine of the **Miles** case to

the effect that forum non conveniens is not applicable in such cases in the state courts.

Section 1404 (a), Judicial Code [28 U. S. C. A., § 1404 (a)];
Act of June 25, 1948, c. 646, § 18, 62 Stat. 989;
Cinema Amusements, Inc., v. Loew's, Inc., D. C. Del., 85 F. Supp. 319, 322;
Ex Parte Collett, 337 U. S. 55, 69 S. Ct. 944, 95 L. Ed. ....

VII.

The doctrine of forum non conveniens, if applied to an action under the Federal Employers' Liability Act in a state court by a non-citizen, where the state declines to apply such doctrine to such actions by its citizens, would violate the Privileges and Immunities and the Due Process of Law clauses of Article IV, Section 2, and of the 14th Amendment, of the Constitution of the United States.

Cole v. Cunningham, 133 U. S. 107, 10 S. Ct. 271, 33 L. Ed. 538;
Chambers v. Baltimore & O. R. Co., 207 U. S. 142, 28 S. Ct. 34, 52 L. Ed. 143;
Missouri Pacific R. Co. v. Clarendon Boat Oar Co., 257 U. S. 533, 42 S. Ct. 210, 66 L. Ed. 354;
McKnett v. St. Louis & S. F. R. Co., 292 U. S. 230, 54 S. Ct. 690, 78 L. Ed. 1227;
Miles v. Illinois Central R. Co., 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129.

ARGUMENT.

I.

At the outset, we submit that this Court is without jurisdiction in these proceedings.

It scarcely seems necessary to analyze authorities in support of the proposition that to give this Court jurisdiction in these cases, it must appear that there is a federal question involved which is decisive, and, if the decision of the Supreme Court of Missouri rests upon a non-federal ground which independently and adequately supports the judgment of that state court, this Court will not exercise jurisdiction. While we have cited numerous authorities in support of this rule of law in our "Summary of the Argument," we shall confine our discussion to but two of them which are fairly recent.

In **Honeyman v. Hanan**, 300 U. S. 14, 18, this Court held that before it may undertake to review a state court decision, it must affirmatively appear from the record not only that the federal question was presented for decision to the highest court of the State having jurisdiction, but that the decision of the federal question was necessary to the determination of the cause. On page 21 of 300 U. S., this Court quoted approvingly from its decision in **Brown v. Atwell**, 92 U. S. 327, as follows:

> "We have often decided that it is not enough to give us jurisdiction over the judgments of the State courts for the record to show that a Federal question was argued or presented to that court for decision. It must appear that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it. Commercial

National Bank of Cincinnati v. Buckingham's Executors, 5 How. 341; Lawler et al. v. Walker et al., 14 id. 154; R. R. Co. v. Rock, 4 Wall. 180; Parmelee v. Lawrence, 11 id. 38."

In **Kalb v. Feuerstein**, 308 U. S. 433, 437, this Court further said:

"Appellees insist, however, that the Wisconsin court on rehearing rested its judgment on an adequate non-Federal ground. If that were the fact, we would not, under accepted practice, reach the State court's construction of the Federal statute."

II.

It is our position that the decision and judgment of the Supreme Court of Missouri in these cases is adequately and independently supported by a non-federal ground.

What was involved in the Supreme Court of Missouri must be borne in mind. A Missouri trial court had ruled that it had no jurisdiction or discretion to hear or determine motions to dismiss predicated upon the doctrine of forum non conveniens, because the Supreme Court of Missouri:

"* * * has announced in no uncertain terms that we have no discretion to dismiss a case merely on the ground of inconvenience and on the ground that such cases clog our dockets and burden the court with litigation that should have been brought elsewhere to the detriment of our local litigants and at the expense of our taxpayers. Such consideration might well appeal to the legislature to vest our trial courts with such discretion but in the opinion of our Supreme Court our legislature has not done so by any statute heretofore enacted but, on the contrary, has placed upon our courts the burden of taking jurisdiction in Federal

> Employers' Liability cases wherever the cause of action may have accrued and wherever the parties and witnesses may reside" (R. 28-30, 58).

The Supreme Court of Missouri had issued its alternative writs of mandamus to the trial court, commanding the trial court "to exercise your proper jurisdiction and to determine on the merits the issues presented by defendant's motion to dismiss" (R. 31, 59). Upon final hearing, the Supreme Court of Missouri quashed its alternative writs of mandamus (R. 76), stating, among other things (R. 73-74, 224 S. W. 2d, l. c. 110):

> "* * * Missouri does not have a statute similar to the New York statute which the courts of that state have held to give them discretionary power to dismiss an action brought by a non-resident as distinguished from a citizen of another state. Also, Missouri permits citizens of this state to file Federal Employers' Liability cases in its courts. To deny the same privilege to citizens of another state would violate Article 4, Section 2, of the Constitution of the United States."

and, further (R. 74, 224 S. W. 2d, l. c. 110):

> "The Federal Employers' Liability Act does not compel the courts of this state to hear cases arising under that act, but it empowers our courts to do so.
>
> "Since Missouri does allow its citizens to maintain Federal Employers' Liability actions in its courts (see the many such cases listed in the Missouri Digest) it follows that not to allow citizens of other states the right to file Federal Employers' Liability suits in our state courts would violate Article 4, Section 2, of the Constitution of the United States."

We submit that it plainly appears from the above quotations from the opinion of the Supreme Court of Missouri

in these cases, when considered in the light of what the trial court had ruled and what was before the Supreme Court of Missouri at the time with respect to the trial court's ruling, that the Supreme Court of Missouri ruled by necessary implication that, under the constitutional and statutory provisions of that State, the courts of that State were without discretion to refuse to entertain jurisdiction of actions based upon transitory causes of action—including actions arising under the Federal Employers' Liability Act—brought by citizens of that State, regardless of expense, inconvenience or harassment, and, having so ruled, was compelled to rule similarly regarding such actions brought by non-citizens. Without considering the local law of Missouri, including the constitutional and statutory provisions, the Supreme Court of Missouri could not have determined that Missouri allowed and permitted its citizens to file and maintain such actions in its courts.

If, as petitioners so aptly and correctly state at page 19 of their respective briefs:

> "In the instant case[s], the jurisdiction and venue of Missouri courts for the trial of F. E. L. A. cases derive from the Constitution and legislative acts of Missouri." (Bracketed portion supplied);

does it not follow that the decision of the Supreme Court of Missouri below is independently and adequately supported by a non-federal ground when it is based upon a holding that "Missouri does allow its citizens to maintain Federal Employers' Liability actions in its courts" (R. 74; 224 S. W. 2d, l. c. 110), and, therefore, must also allow non-citizens to do so?

The making of such a ruling by the Supreme Court of Missouri, upon the non-federal ground, predicated upon that State's constitutional and statutory provisions is con-

sistent, not only with the correct statement in petitioners' briefs (at page 19 thereof), to the effect that:

> "* * * whether or not state courts, in the trial of F. E. L. A. cases, will apply the doctrine of *forum non conveniens* in the matter of retention or relinquishment of jurisdiction in F. E. L. A. cases is a matter of state policy with which Congress has not undertaken to interfere."

but with the earlier decisions of the Missouri courts relative to the effect of such provisions of local law respecting the right of persons to institute and prosecute actions in the courts of that State based upon transitory causes of action. A review of such statutory and constitutional provisions, and the decisions of the Missouri courts under them, while evidently not deemed necessary by the Supreme Court of Missouri in its opinion below, will, we believe, be illuminating to this Court.

Article I, Section 14, of the Constitution of Missouri 1945, provides:

> "That the Courts of justice **shall** be open to **every** person and certain remedy afforded for **every** injury to person, property or character, and that right and justice shall be administered without sale, **denial** or delay." (Emphasis supplied.)[2]

Section 10 of Article I, of the Constitution of Missouri 1945, provides:

> "That **no person** shall be deprived of life, liberty or property without due process of law." (Emphasis supplied.)

Article V, Section 14, of the Constitution of Missouri 1945, provides, in part:

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2 This provision is identical with Art. II, Sec. 10, of the Constitution of Missouri, 1875, except that the word "shall" in the last clause of the present section appeared as "should" in the Constitution of 1875.

"The circuit courts shall have * * * exclusive original jurisdiction in all civil cases not otherwise provided for, * * *."[3]

Section 14 of the Civil Code of Missouri (Laws of Missouri 1943, pp. 353 et seq., l. c. 360, Mo. R. S. A. §847.14) provides:

"Section 14. Action on claims existing under law of another state may be brought in this state, how.—

"(a) Whenever a claim exists under the law of another state, action thereon may be brought in this state by

"(1) the person or persons entitled to the proceeds of such claim if he or they are authorized to bring such action by the laws of said other state;

"(2) the executor, administrator, guardian, guardian ad litem or other person empowered by the laws of said other state to sue in a representative capacity if the person or persons entitled to the proceeds of such claim are not authorized to sue in such cases under the law of said other state.

"(b) In the cases mentioned in (2) above, the proceeds of the action, resulting either from judgment or settlement, shall be paid to the person bringing such suit and such person is authorized to satisfy the judgment and execute release. Such person to whom the proceeds are paid shall have authority to distribute and pay same to the person or persons entitled thereto, according to their respective interests therein, under the laws of said other state."[4]

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[3] This is identical with the provisions of Art. VI, Sec. 22, of the Constitution of Missouri 1875.

[4] The origin of this section is found in statutes enacted by Laws of Missouri, 1891, p. 68, as amended by Laws of Missouri, 1905, p. 95, and are found as §§ 547-549, R. S. Mo. 1899; §§ 1736-1738, R. S. Mo. 1909; §§ 1162-1164, R. S. Mo. 1919; §§ 705-707, R. S. Mo. 1929; §§ 856-858, R. S. Mo. 1939.

Under the substantially identical constitutional and statutory provisions which prevailed in Missouri prior to the enactment of the Revised Statutes of Missouri 1943, and the adoption of the Constitution of Missouri in 1945 (which earlier statutory and constitutional provisions we have noted in the footnotes), it has repeatedly been held in Missouri that the circuit courts in that state have no power to decline jurisdiction of a case on the ground of forum non conveniens, although that precise terminology was not used.

In **State ex rel. Pacific Mutual Life Ins. Co. v. Grimm,** 239 Mo. 135, 143 S. W. 483, in discussing the effect of the enactment of the statutes (then §§ 1736-1737, R. S. Mo. 1909) which now constitute the substance of §14 of the Civil Code of Missouri (Laws of Missouri 1943, p. 360, §14; Mo. R. S. A., §847.14), and of the Missouri constitutional provisions, the Supreme Court of Missouri said (143 S. W., l. c. 497):

> "* * * the contention that the plaintiff's right to sue in the courts of this state rests on comity will receive notice here. Counsel for petitioner cite many cases lending support to their contention, some of which were decided by some of the most respectable courts of the country. In fact, this court and the Courts of Appeals of this state have so held in a number of cases; but upon an examination it will be seen that they were decided prior to the enactment or amendment of the statutes of this state governing this matter. Prior to such enactments it was generally considered and understood that the right of a non-resident of this state to sue on a cause of action arising in some other state, in the courts of this state, rested purely upon comity, and that our courts could, in any case where they deemed it wise and proper, decline to assume jurisdiction over or to try the case. But since the enactment of section 1736, and the amend-

ment of section 1737, R. S. 1909, such right of a nonresident no longer rests solely upon principle of 'Comity,' within the broad meaning of that word. **Those sections are binding upon all the courts of this state, and whenever a suit is brought in any court of this state, which is embraced within their provisions, no court has the legal right to decline jurisdiction over, or to try it, as it had prior to such enactments.**

* * * * * * * * *

"These statutes were under consideration in the case of Newlin v. Railroad Co., 222 Mo. 375, 121 S. W. 125, and the court there held that these statutes were founded upon comity and opened the doors of our courts to causes of action accruing under the laws of sister states. Meaning, of course, that the doors were not opened at the discretion of the court, as was formerly the case, but mandatory, in harmony and in keeping with section 2 of article 4 and section 1 of the fourteenth amendment of the Constitution of the United States, * * *"

and, further, after a discussion of some authorities (143 S. W., l. c. 498):

"Both the federal courts, and this court in the case cited, and in many more, have uniformly held that, **whenever a nonresident or a foreign corporation has a valid cause of action under the laws of this state or under the laws of any other state, he or it may sue thereon in the courts of this state, provided** legal service can be had upon the defendant, and provided, further, **that a citizen of this state, under its laws, is authorized to sue in our courts on a cause of action similar to the one sued on by said nonresident or foreign corporation**; and that, too, despite a statute of the state denying to such corporation such right to sue. Those rulings are based upon the ground that, under the constitutional provisions previously men-

tioned, all citizens of the United States are entitled to all the privileges and immunities which are granted by the laws of any state to her own citizens, as previously stated; and that any statute of a state which denies such right of such person or corporation to sue in the courts of such state is violative of said constitutional provisions, and are therefore absolutely null and void. That is not only the law as announced by those courts, but it was correctly so announced. It would be both unjust and intolerable for one state of the Union to possess the power and authority to enact a valid statute closing the doors of its courts to citizens of the United States, or of other states, and deny to them the right or privilege of suing in the courts thereof, while the citizens of such state enjoy that right or privilege. To so hold would be not only to nullify the spirit of the provisions of the federal Constitution previously mentioned, but the letter thereof as well.

"While, as previously stated, counsel for the petitioner cite some respectable authorities holding that the Legislature and courts of a state possess such power and authority; upon an examination of them it will be seen that they were decided solely upon the principle of comity, and the constitutional provisions mentioned were not considered. Consequently they have no binding effect upon this court.

"Having thus seen that **the doors of our courts**, under the law of comity, the statutes of this state as previously quoted, and the constitutional provisions before mentioned, **are ever opened to all citizens of the United States and the citizens of the various states to sue upon any valid transitory cause of action, which might be sued upon in our courts, by a citizen of this state**, it only remains for us, in this connection, to ascertain whether or not the cause of action of Mrs. Rawn, the plaintiff in the case against the petitioner,

is a valid transitory cause of action, and could a citizen of this state sue in our courts on a similar cause of action." (Emphasis supplied.)

In **Gold Issue Mining & Milling Co. v. Pennsylvania Fire Ins. Co.**, 267 Mo. 524, 184 S. W. 999, the Supreme Court of Missouri in discussing the same statutes (then §§ 1736-1737, R. S. 1909) which now constitute in substance paragraph (a) of Section 14 of the Civil Code of Missouri, it was said (184 S. W., l. c. 1015):

"From this reading of these two sections it will be noticed that they place no limitation whatever upon the persons who may bring such a suit, save, of course, that it must be brought by the party who, under the law of said state or territory, is entitled to the proceeds of said cause of action, and of course that might be either an individual or a corporation. The clear purpose of all of our statutes, when taken together, was to give full force and effect to said section 10, Art. 2, of the Missouri Constitution, which provides that, 'The courts of justice shall be opened to *every person.*' Not a part of them. Not to the citizens or residents of Missouri only, nor to the citizens of the United States only, but to all persons of the world who demand justice at the hands of our courts against any one who may be found within the jurisdiction of this state, whether resident or nonresident, individual or corporation. This is perfectly clear from the reading of that section of the Constitution which says *every person* may sue. Not only that, but the same section further provides that a 'certain remedy [shall be] afforded for *every injury to person, property or character,*' etc. This provision is not limited to *some of the injuries* that have or may be done to the person, property, and character of those mentioned in the preceding clauses, but by clear and unambiguous

words includes *every one of the character mentioned.*" (Emphasis the court's.)

And, further (184 S. W., l. c. 1016):

"* * * The test in transitory actions, as laid down by all of the authorities, is, Does the law of the state where the defendant is found provide: First, that suit may be brought upon such a cause against any and all persons found within the jurisdiction of the state, whether residents or nonresidents thereof; and, second, does the law amply provide for due process of law upon the defendant in such a case? If so, then it is wholly immaterial where the cause of action arose, and what is the residence of the defendant."

And, still further (184 S. W., l. c. 1018):

"* * * *where may suits on contracts, torts, and other transitory actions be brought?* Of course it cannot be said, nor do any of the cases cited hold, that nonresidents can sue *all persons within the jurisdiction of this state*, under the section of the Practice Act before mentioned, but they do hold that if a resident of this state can sue any or all persons within the jurisdiction of this state in the courts hereof on any transitory cause of action, under that or any other statute of this state, or under the rules of the common law, then, under said section 1 of the Fourteenth Amendment, any citizen of the United States, though residing elsewhere, whether an individual or a corporation, is guaranteed the same right to sue upon a similar cause of action in the courts of this state. In other words, the effect of that section of the Constitution is to extend to all citizens of the United States, who are residents of other states or countries, the same right to sue persons found within the jurisdiction of this state, upon the same causes of action, that is enjoyed by our citizens under the Constitution and laws of this

state, or, to express the same idea in different language, the Constitution and laws of this state, in the regard mentioned, were designed principally for the citizens of Missouri, and secondarily for all persons of the world, as previously stated; but, be that as it may, the first section of the Fourteenth Amendment extends all such constitutional provisions and statutory enactments of this state, of the character mentioned, to all citizens of the United States residing elsewhere. That is the plain meaning and effect of the ruling of the Supreme Court of the United States in the cases before cited upon this question; and also of the rulings of this court in the cases cited in connection therewith." (Emphasis the court's.)

The above quoted language from the **Grimm** case was quoted with approval in **British-American Portland Cement Co. v. Citizens Gas Co.**, 255 Mo. 1, 164 S. W. 468, 476-478, after the court there had there previously said (164 S. W., l. c. 473):

"* * * The right to sue in the courts of this state is guaranteed to every person by both the state and federal Constitutions. The provisions governing that matter are sections 10 and 30 of article 2 of the Constitution of Missouri, and section 2 of article 4, of the Constitution of the United States, and section 1 of the fourteenth amendment of the latter instrument."

And, further (164 S. W., l. c. 474-475):

"Common justice, common honesty, and good morals demand that every one should have a hearing in and upon any and all matters involving his or their lives, liberty, property, and domestic relations, all of which are guaranteed and firmly protected by both the state and federal Constitutions. * * *

* * * * * * *

"The framers of our Constitution in their wisdom and foresight clearly foresaw just such a situation as is here presented, and adopted section 10 of article 2 of our Constitution, providing that: 'The courts of justice shall be open to every person, and certain remedy offered for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay.' What language could be more comprehensive and sweeping than this? It clearly includes all citizens of the United States, be they natural or artificial persons, because the Constitution of this state recognizes both, and this court and the Supreme Court of the United States have repeatedly held that corporations are included within the meaning of the word 'citizen,' as will be later shown."

In that case the plaintiff was a West Virginia corporation, not licensed to do business in Missouri, and the corporate defendant was an Oklahoma (Indian Territory) corporation, not licensed to do business in Missouri, and the action was brought in the Circuit Court of Jackson County to recover monies paid by plaintiff on account. The Missouri Supreme Court there concluded (164 S. W., l. c. 478):

"* * * wherever a citizen of this state may sue in our courts, so may any citizen of the United States."

The above quoted language from the **Grimm** case, supra, was much more recently quoted with approval in **Burg v. Knox**, Mo. Sup., 67 S. W. 2d 96, 99, where it was further said:

"It is our opinion that the views of the Court of Appeals concerning comity and sections 705 and 706, R. S. 1929 (Mo. St. Ann., §§ 705, 706, pp. 918, 920), are not as sound as those expressed by the Supreme

Court en Banc in the case of State ex rel. Pacific Mutual Life Insurance Company v. Grimm, 239 Mo. 135, 143 S. W. 483. This court en Banc, in State ex rel. v. Landwehr, 318 Mo. 181, 300 S. W. 294, overruled its former opinion in the Grimm case on the question of the validity of service of summons on the insurance commissioner in an action against a foreign insurance company upon a policy written in another state. But the opinion in the Landwehr Case **did not disturb the expressions of the court in the Grimm Case on comity and sections 705 and 706."** (Emphasis supplied.)

We feel warranted in including in our discussion under this point the cases immediately hereinafter referred to because, although they involve actions under the Federal Employers' Liability Act, the decisions in them did not rest upon the effect of the venue provisions found in that Act, but rested instead upon general principles of law, Federal constitutional provisions and state constitutional and statutory provisions, such as we have here been discussing.

In **Wells v. Davis**, 303 Mo. 388, 261 S. W. 58, the plaintiff was the administratrix appointed by the Arkansas courts, of the estate of a deceased resident of Arkansas, who had sustained fatal injuries in Arkansas. The residence of the defendant, who was the Director General of Railroads and in charge of and operating the St. Louis-San Francisco Railway Company, as well as the residence of that company, is not shown by the opinion. The action was brought in the Circuit Court of Lawrence County, Missouri, under the Federal Employers' Liability Act. Although the doctrine of *forum non conveniens* is not referred to by name in the opinion, the **right** of the plaintiff to maintain her action in the Missouri courts, under the statutes of that State (then Sections 1162-1164, R. S. Mo.

1919) now incorporated in Section 14 of the Civil Code of Missouri, was directly involved—which, if such right existed, would preclude *forum non conveniens.* It was held that plaintiff had such right, the court saying (261 S. W., l. c. 61-62):

"The cause of action here arises under the federal act, and the party plaintiff is designated by the same law. The act supersedes all other laws upon that subject. Second Employers' Liability Cases, 223 U. S. 53, 32 Sup. Ct. 169, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44; St. Louis etc. R. R. Co. v. Seale, 229 U. S. 156, 33 Sup. Ct. 651, 57 L. Ed. 1129, Ann. Cas. 1914 C, 156; Seaboard Air-Line Ry. v. Horton, 233 U. S. 492, 34 Sup. Ct. 635, 58 L. Ed. 1062, L. R. A. 1915 C, 1, Ann. Cas. 1915 B, 475.

"'The laws of the United States are laws in the several states, and just as much binding on the citizens and courts thereof as the state laws are. The United States is not a foreign sovereignty as regards the several states, but is a concurrent, and, within its jurisdiction, paramount sovereignty. * * * Legal or equitable rights, acquired under either system of laws, may be enforced in any court of either sovereignty competent to hear and determine such kind of rights and not restrained by its Constitution in the exercise of such jurisdiction.' Claflin v. Houseman, 93 U. S., loc. cit. 136, 137 (23 L. Ed. 833); cited and quoted in Second Employers' Liability Cases, 223 U. S. 53, 32 Sup. Ct. 169, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44.

* * * * * * *

"* * * Section 1163 cannot be held to govern so as to exclude a case founded upon a cause of action under a law which thus supersedes the law of the other state where the cause of action arose, and is not a law foreign to either state.

"Section 1163 is regarded as inapplicable to exclude the right to sue, because it expresses a policy to allow the representative to sue upon this class of causes of action whenever such a cause of action has accrued within any of the other state or territorial jurisdictions of the United States, and the federal act is controlling as an expression of the constitutional power of Congress to create the right of action, and to confer it upon whom it saw fit.

* * * * * * *

"When section 1163 was enacted the power of Congress had not been exercised upon this subject, but the power existed. When exercised, it resulted in a law which took the place of the laws of the state covering the same subject.

"Section 1163 was enacted as an enabling statute, responsive to a policy then pursued severally by the states upon a certain subject. It ought not to be construed narrowly as a disabling statute in its relation to a law, universal and exclusive in effect upon that subject, to that extent taking the place of the laws of the states, enacted in the exercise of a power which always existed, and establishing a uniform policy in respect of right and of remedy."

In **State ex rel. Foraker v. Hoffman**, 309 Mo. 625, 274 S. W. 362, a plaintiff administrator, appointed by the Kansas courts, of a deceased resident of Kansas who had sustained fatal injuries in that State, brought a suit under the Federal Employers' Liability Act, in the Circuit Court of Pettis County, Missouri, for damages for the decedent's death, against a Missouri railroad corporation, operating in both Missouri and Kansas. The defendant had filed a motion to dismiss which, while not referring by name to the doctrine of forum non conveniens, averred the factual elements which would bring that doctrine into op-

eration, such as: non-residence of the plaintiff; the accrual of the cause of action in a foreign state; and the difficulties and expense of litigation at a point remote from the scene of the casualty. Upon the production of evidence to support its averments, the defendant's motion to dismiss, the trial court had sustained the motion to dismiss. Missouri Supreme Court, by its writ of mandamus, ordered the Circuit Court of Pettis County to set aside its order dismissing the plaintiff's case, and to hear and determine the action. Although the doctrine of forum non conveniens was not by name referred to in the opinion, the case involved the **right** of the plaintiff to maintain the action as against defendant's contentions of hardship by reason of conducting the trial at a place distant from the place where the cause of action accrued, and upheld that right—thereby inferentially ruling the doctrine of forum non conveniens to be without application. The ruling there was affirmed by this Court in **Hoffman v. State ex rel. Foraker**, 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905.

In **Shaw v. Chicago & A. R. Co.**, 314 Mo. 123, 282 S. W. 416, the plaintiff, an Illinois resident and the administratrix appointed by the Illinois courts of the estate of a deceased Illinois resident who had been fatally injured in Illinois, brought an action in the Circuit Court of Jackson County, Missouri, under the Federal Employers' Liability Act, to recover damages for decedent's death. The citizenship and residence of the defendant does not appear in the opinion.[5] The defendant duly filed a motion to dismiss, averring in detail facts which would bring into operation the doctrine of forum non conveniens, and tending to show that trial in the forum of the action would impose hardship, inconvenience and expense upon the parties, and upon the courts and taxpayers of Jackson County. Upon

[5] The residence of defendant appears, however, to have been in Illinois, in the opinion in Bright v. Wheelock, 323 Mo. 840, 20 S. W. 2d 684, hereinafter discussed.

the motion being overruled, defendant repleaded its substance by way of answer. Following a verdict and judgment for plaintiff, on appeal the Missouri Supreme Court disposed of defendant's contentions by saying (282 S. W., l. c. 418):

> "The motion to dismiss, which was repleaded by way of answer, urges that both plaintiff and defendant are residents of Illinois; that the cause of action arose in Illinois; that to try the cause in Missouri meant the bringing of witnesses from a great distance; that the trial of such causes originating as this is an imposition upon our courts, and imposition upon the taxpayers of Jackson county, the place of trial; that such a trial would require the taking of depositions and the inconvenience and expense of getting witnesses, all to the great prejudice of the defendant. This point is fully covered by our very recent case of Wells v. Davis, 261 S. W. 58, 303 Mo. 388. The discussion there is so full and so recent that we will not rehash the subject, except to emphasize the fact that a cause of action given by the federal government, and made enforceable in the state courts, as are cases under the Employers' Liability Act, such a law is not one of a foreign country, but is one which fairly comes within the terms of section 1163, R. S. 1919, relative to our practice in this state. It is a part of the law in every state. See, also, State ex rel. v. Hoffman (Mo. Sup.), 274 S. W. 362."

Although the doctrine of forum non conveniens was not by name referred to in the opinion above quoted, the opinion and decision clearly show that doctrine to be held inapplicable by the Missouri Supreme Court in Federal Employers' Liability cases, by reason of Missouri statutory and constitutional provisions and the provisions of the Federal Constitution.

In **Bright v. Wheelock**, 323 Mo. 840, 20 S. W. 2d 684, the plaintiff, an Illinois resident, brought suit, under the Federal Employers' Liability Act, in the Circuit Court of Jackson County, Missouri, against defendants, who were Illinois residents and receivers of an Illinois railroad corporation, for injuries sustained by plaintiff in Illinois. The defendants appeared specially and filed a motion to dismiss averring, in detail, facts which would bring the doctrine of forum non conveniens into operation, similar to the motion filed in the Shaw case, supra.[6] The motion was, upon hearing, overruled, and defendants reincorporated its substance in their answer. On appeal the Missouri Supreme Court, in passing upon the propriety of the point made in defendants' motion, discussed the Shaw case, supra,[7] and regarding it said (20 S. W. 2d, l. c. 699):

> "The legal effect of our ruling in the Shaw Case, supra, is that the pleaded facts aforesaid are insufficient to constitute a defense (that is, *a bar*) to the maintenance of such action in the courts of this state. The ruling of this court in the Shaw Case follows, and is grounded upon our previous rulings in two earlier cases, involving somewhat similar facts and contentions, wherein this court, in effect, ruled such an action to be maintainable in the courts of our state. Wells v. Davis, 303 Mo. 388, 261 S. W. 58; State of Missouri ex rel. Foraker v. Hoffman, 309 Mo. 625, 274 S. W. 362."

Then, because defendants brought attention to the then recently decided case of **Douglas v. New York, N. H. & H R. Co.**, 279 U. S. 377, 49 S. Ct. 355, 73 L. Ed. 747, the Missouri Supreme Court further said concerning the **Douglas** case (20 S. W. 2d, l. c. 700):

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6 314 Mo. 123, 282 S. W. 416.

7 314 Mo. 123, 282 S. W. 416.

"A statute of New York, providing that an action against a foreign corporation may be maintained in a court of New York by a nonresident of that state, where such foreign corporation is doing business within that state, was construed by the Court of Appeals of New York to allow and give to the courts of that state a discretion to refuse to entertain jurisdiction of a suit (under the Federal Employers' Liability Act [45 U. S. C. A., §§ 51-59]) brought in a court of New York, where the injuries sued for were inflicted in a foreign state, of which foreign state the plaintiff was a citizen and resident, and of which foreign state the defendant railroad corporation was also a citizen, although doing business in New York, where the suit was brought. The federal Supreme Court affirmed the ruling and judgment of the Court of Appeals of New York, holding that the construction given to the New York statute by the highest court of that state is not in contravention with any provision or requirement of the federal Constitution, and that there is nothing in the provisions of the Federal Employers' Liability Act (45 U. S. C. A., §§ 51-59) which requires the courts of the several states to entertain suits arising under the provisions of that act of Congress. **However, our own court has not construed the (somewhat similar) statutes of this state (sections 1163 and 1180, Rev. St. 1919)** [now, substantially, § 14 of the Civil Code of Missouri] **to invest the courts of this state with the discretion to refuse to entertain jurisdiction of such a suit. Our previous rulings, as announced in the Shaw, Wells and Foraker Cases, supra, appear to be to the effect that the statutes, supra, do not invest the courts of our state with such discretion,** and we see no good or sufficient reason for overruling, at this time, our prior decisions construing such statutes. It would seem

to us that the correction of the evil (herein complained of by respondents), if there be any evil, lies with the Legislature rather than with the judiciary. The giving of plaintiff's instruction No. 5 was proper under the law as announced by this court in the cases, supra, and was not error, * * *." (Emphasis and bracketed portion supplied.)

Instruction No. 5, referred to in the quotation last above made, read (20 S. W. 2d, l. c. 698):

"The court instructs the jury that if you find that the defendants at the time and place in question were engaged in commerce between states as defined in instruction No. 1, then the plaintiff had the right to bring and prosecute this suit in this county and state and the fact that the Chicago & Alton Railroad Company is incorporated in Illinois, or that the plaintiff and defendants are residents of that state, or that the injury occurred there, or that plaintiff might have sued in the courts of that state, does not constitute a defense to this cause of action."

The opinion in the **Bright** case, supra, while not mentioning by name the doctrine of forum non conveniens, had under consideration every element necessary to invoke that doctrine, and the Missouri Supreme Court there was asked to invoke it, but declined to do so, and clearly and unequivocally held that such doctrine has no application in that state because its Constitution and statutes (a) give a **right** to all persons to maintain in the courts of that state any action which a resident of that state might maintain therein, and (b) divest the courts of that state of any discretion to refuse to entertain any such action.

The conclusion reached by the Supreme Court of Missouri in the cases now before this Court, as well as the conclusions reached by that court in the earlier cases be-

fore it involving the Federal Employers' Liability Act which are just above referred to, are founded upon the local laws of Missouri, rather than upon any interpretation of that federal act. Such conclusions are identical with that recently arrived at by the decision of the Supreme Court of Alabama in **Ex parte State ex rel. Southern Ry. Co.**, Ala., 47 So. 2d 249, which involved a situation identical with that here involved, and which is predicated entirely upon the local laws of Alabama.

Thus it is apparent that in the cases at bar, the Supreme Court of Missouri rested its judgment upon a construction of the Missouri constitutional and statutory provisions which, independently of any federal question, and adequately, supported that judgment. Accordingly, we submit, it appears that the decision of any federal question argued and presented to that court was unnecessary to its determination of these cases, and is not for consideration here because of lack of jurisdiction of this Court.

III.

If we approach the matter from another angle, lack of jurisdiction in this Court is also apparent.

Actually, what the Supreme Court of Missouri did in the cases at bar was nothing more than to determine the limits of the jurisdiction of one of the *nisi prius* courts of general jurisdiction of that state. The trial court had ruled itself to be without jurisdiction or discretion to entertain pre-trial motions to dismiss in two separate, but similar, cases involving transitory actions arising outside Missouri (R. 28-30, 58). The Supreme Court of Missouri, upon application of the movants, had issued its alternative writs of mandamus to compel the trial court to exercise jurisdiction and determine such motions on their merits (R. 30-31, 59). On final hearing, the Supreme Court

of Missouri ruled that its alternative writs of mandamus be quashed, upon the theory that the trial court was without jurisdiction to hear and determine such motions. Petitioners here are seeking to have this Court declare that ruling of the Supreme Court of Missouri to be erroneous, and to have this Court define the limits of the jurisdiction of the Missouri trial court. This, we submit, presents no federal question which would give this Court jurisdiction.

A similar situation was presented in **St. Louis, I. M. & S. R. Co. v. Taylor,** 210 U. S. 281. There, an action under the Federal Safety Appliance Act was brought in the Arkansas state courts for fatal injuries which occurred in the Indian Territory, and the plaintiff recovered a judgment which was affirmed by the Supreme Court of Arkansas. This Court there held that the question of jurisdiction of the Arkansas courts was not a federal question, and that this Court had no jurisdiction to review the rulings of the Arkansas courts holding that they had jurisdiction, saying (210 U. S., l. c. 285):

> "The plaintiff in error contends that of such a cause, triable as it was in the courts of the territory created by Congress, the courts of Arkansas have no jurisdiction. **This contention does not present a federal question.** Each state may, subject to the restrictions of the Federal Constitution, determine the limits of the jurisdiction of its courts, the character of the controversies which may be heard in them, **and specifically, how far it will, having jurisdiction of the parties, entertain in its courts transitory actions where the cause of action has arisen outside its borders.** Chambers v. Baltimore & O. R. Co., 207 U. S. 142, ante, 143, 28 Sup. Ct. Rep. 34. We have, therefore, no authority to review the decisions of the state court, so far as it holds that there was jurisdiction to hear and determine this case. **On that question the decision of that court is final.**" (Emphasis supplied.)

In **Chambers v. Baltimore & O. R. Co.**, 207 U. S. 142, cited in the above quotation, this Court had said (207 U. S., l. c. 147):

> "But, subject to the restrictions of the Federal Constitution, the state may determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them."

In **John v. Paullin**, 231 U. S. 583, 585, this Court first said:

> "Without any doubt, it rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and **the State law and practice in this regard are no less applicable when federal rights are in controversy than when the case turns entirely upon questions of local law.**" (Emphasis supplied.)

So, here, the mere fact that the actions in the Missouri trial court involved rights under a federal statute—the Federal Employers' Liability Act—does not make any less applicable the Missouri law respecting the jurisdiction of its courts and the limits of that jurisdiction. The ruling of the Missouri trial court was that it had no jurisdiction over the merits of the motions to dismiss filed with it, and its decision was based entirely upon Missouri law (R. 28-30). The Supreme Court of Missouri, by quashing its alternative writs of mandamus issued to compel the trial court to exercise jurisdiction over the merits of such motions, in effect did no more to affirm the ruling of the trial court, and, in any event, did no more than define the limits of the trial court's jurisdiction. The correctness of that ruling by the Supreme Court of Missouri presents no federal question, and is an independent and adequate basis for the judgment of the Supreme Court of Missouri quashing its alternative writs of mandamus. This Court

is, accordingly, without jurisdiction to review that ruling of the Supreme Court of Missouri by the instant certiorari proceedings.

IV.

Petitioners also assert that the Supreme Court of Missouri erred in its interpretation of the opinions of this Court in **Miles v. Illinois Central R. Co.**, 315 U. S. 698, and **Kepner v. Baltimore & Ohio R. Co.**, 314 U. S. 44. If that were so, it would not warrant this Court in reversing the Supreme Court of Missouri because, as we have demonstrated under points I to III of this brief, the decision of the Supreme Court of Missouri below is independently and adequately supported by a non-federal ground.

However, we believe that the Supreme Court of Missouri did not err in its interpretation of the **Miles** and **Kepner** cases. Those cases are significant here, and were significant to the Supreme Court of Missouri in arriving at its opinion below, because they demonstrate and rule that matters of expense, inconvenience and harassment—which are the bases of the doctrine of forum non conveniens—can not be utilized as the basis for depriving an injured employee of the privilege of venue granted by the Federal Employers' Liability Act with respect to both the federal and state courts.

In the **Kepner** case this Court held that the act conferred "a plain grant of privilege" to the employee in the selection of a forum, and said (315 U. S., l. c. 53-54):

> "The privilege was granted because the general venue provisions worked injustices to employees. It is obvious that no state statute could vary the venue; and, we think, equally true that no state court may interfere with the privilege, for the benefit of the carrier or the national transportation system, on the ground of inequity based on cost, inconvenience or harass-

ment. * * * **A privilege of venue, granted by the legislative body which created this right of action, cannot be frustrated for reasons of convenience or expense.** If it is deemed unjust, the remedy is legislative * * *." (Emphasis supplied.)

In the **Miles** case, this Court said (315 U. S., l. c. 703-704):

"In the legislative history of section 6 [of the Employers' Liability Act] the provision that removal may not be had from a 'State court of competent jurisdiction' was added to the House bill on the floor of the Senate and later accepted by the House, **in order to assure a hearing to the employee in a state court.** Words were simultaneously adopted recognizing the jurisdiction of the state courts by providing that the federal jurisdiction should be concurrent. The venue of state court suits was left to the practice of the forum. The opportunity to present causes of action arising under the F. E. L. A. in the state courts came, however, not from the state law but from the federal. By virtue of the Constitution, the courts of the several states must remain open to such litigants on the same basis that they are open to litigants with causes of action springing from a different source. This is so because the Federal Constitution makes the laws of the United States the supreme law of the land, binding on every citizen and every court and enforceable wherever jurisdiction is adequate for the purpose. Second Employers' Liability cases (Mondou v. New York, N. H. & H. R. Co.), 223 U. S. 1, 56-59, 32 S. Ct. 169, 177, 178, 56 L. Ed. 327, 38 L. R. A., N. S., 44. **The Missouri court here involved must permit this litigation.** To deny citizens from other states, suitors under F. E. L. A., access to its court would, if it permitted access to its own citizens, violate the Privileges and Immunities Clause. Constitution, Art. IV, Sec. 2; Mc-

Knett v. St. Louis & S. F. Ry. Co., 292 U. S. 230, 233, 54 S. Ct. 690, 691, 78 L. Ed. 1227. Since the existence of the cause of action and the privilege of vindicating rights under the F. E. L. A. in state courts spring from federal law, the right to sue in state courts of proper venue where their jurisdiction is adequate is of the same quality as the right to sue in federal courts. It is no more subject to interference by state action than was the federal venue in the Kepner case." (Emphasis and bracketed portion supplied.)[8]

And, further (315 U. S., l. c. 705):

"As Congress has permitted both state and federal suits, its determination that the carriers must bear the incidental burden is **a determination that the state courts may not treat the normal expense and inconvenience of trial in permitted places, such as the one selected here, as inequitable and unconscionable.**" (Emphasis supplied.)

And in Mr. Justice Jackson's concurring opinion, it was said (315 U. S., l. c. 706):

"That such a privilege puts a burden on interstate commerce may well be admitted, **but Congress has the power to burden.**" (Emphasis supplied.)

These statements in the **Miles** and **Kepner** cases merely restated what this Court had ruled over the years.

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[8] A footnote to this part of the opinion is also of interest, for it reads:

"Chambers v. Baltimore & Ohio R. Co., 207 U. S. 142, 28 S. Ct. 34, 52 L. Ed. 143, or Douglas v. New York, New Haven R. Co., 279 U. S. 377, 49 S. Ct. 355, 73 L. Ed. 747, do not impinge upon this principle. In the former case an Ohio statute forbade suits in its courts for wrongful death occurring in another state unless the decedent was a citizen of Ohio. This Court saw no discrimination against personal representatives of any decedent since their right to sue did not depend upon their citizenship but upon the citizenship of their decedent. In the latter case a statute of New York, which gave only discretionary jurisdiction to suits by non-residents but compulsory jurisdiction to suits by residents, was held valid because it treated citizens and non-citizens alike and tested their right to maintain an action by their residence or non-residence" (315 U. S., l. c. 702, n. 6).

In **Mondou v. New York, N. H. & H. R. Co.**, 223 U. S. 1, one of the Second Employers' Liability Cases, this Court held that rights arising under the Federal Employers' Liability Act could "be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion" (223 U. S., l. c. 55, 59), and went on to say (223 U. S., l. c. 58):

> "We are not disposed to believe that the exercise of jurisdiction by the state courts will be attended by any appreciable inconvenience or confusion; but, be this as it may, it affords no reason for declining a jurisdiction conferred by law. **The existence of the jurisdiction creates an implication of duty to exercise it, and that its exercise may be onerous does not militate against that implication.**" (Emphasis supplied.)

Later, in **McKnett v. St. Louis & S. F. R. Co.**, 292 U. S. 230, this court re-affirmed that doctrine, saying (292 U. S., l. c. 233):

> "By Mondou v. New York, New Haven & Hartford R. R., 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44, an action in a Connecticut court against a domestic corporation, it was settled that a state court whose ordinary jurisdiction as prescribed by local laws is appropriate for the occasion, may not refuse to entertain suits under the Federal Employers' Liability Act."

Later, in **Hoffman v. State ex rel. Foraker**, 274 U. S. 21, affirming 309 Mo. 625, 274 S. W. 362, wherein a Missouri state court was by mandamus compelled to take jurisdiction over an action under the Federal Employers' Liability Act, brought by a Kansas administrator of a deceased Kansas resident, who was killed in Kansas, this Court extended the earlier doctrine somewhat, and tersely said (274 U. S., l. c. 23):

"It [the carrier] must submit, if there is jurisdiction, to the requirements of orderly, effective administration of justice, **although thereby interstate commerce is incidentally burdened.**" (Emphasis supplied.)

To the same effect is **Denver & R. G. W. R. Co. v. Terte,** 284 U. S. 284, where a Missouri state court was ordered to proceed to trial irrespective of the number of witnesses within and without the state, and irrespective of the relative convenience of the parties, in an action under the Federal Employers' Liability Act brought by a nonresident against a foreign railroad corporation for injuries sustained in Colorado. This Court there said (284 U. S., l. c. 287-288):

"Further, as a practical matter, **courts could not undertake to** ascertain in advance of trial the number and importance of probable witnesses within and without the state and **retain or refuse jurisdiction according to the relative inconvenience of the parties.**" (Emphasis supplied.)

It is, of course, true that the privilege of venue in Federal Employers' Liability cases in the federal courts, as broadly mentioned in the **Kepner** case, has been limited to a degree by Section 1404 (a) of the Judicial Code as recently revised [28 U. S. C. A., §1404 (a); Act of June 25, 1948, c. 646, 62 Stat. 937], providing for a "transfer" of cases "for the convenience of the parties." This was indicated by this Court to have been prompted by the suggestion in the **Kepner** case that any remedy should be legislative (**Ex parte Collett,** 337 U. S. 55, l. c. 57-58, 60-61). **The history of that same legislation, however, indicates quite clearly that it was in no wise to affect the privilege of venue in Federal Employers' Liability cases in state courts as it had previously existed.** By Section 18 of the same act which revised the Judicial Code (Act of June 25, 1948, c. 646, §18, 62 Stat. 989), there was re-

pealed that portion of Section 6 of the Federal Employers' Liability Act which had read:

> "* * * and no case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

At that same time and by that same act, there was enacted Section 1445 (a) of the Judicial Code [28 U. S. C. A., §1445 (a)] which provides:

> "A civil action in any State court against a railroad or its receivers or trustees, arising under sections 51-60 of Title 45, may not be removed to any district court of the United States."

By this legislation, the Congress certainly made quite plain an intention on its part that Federal Employers' Liability cases in the state courts were not to be affected by Section 1404 (a) of the Judicial Code, as revised—for the Congress meticulously preserved the non-removability of such cases to the federal courts where that section could take effect upon them. The intent of the Congress to "assure a hearing to the employee in a state court" of competent jurisdiction, so aptly explained in the **Miles** case (315 U. S., l. c. 703), was affirmed and confirmed, as was doctrine of that case (315 U. S., l. c. 705, 706), and of the earlier cases (**Hoffman v. State ex rel. Foraker**, 274 U. S. 21, 23; **Denver & R. G. W. R. Co. v. Terte**, 284 U. S. 284, 287-288), which the Congress must have had in mind, that the privilege of bringing actions under the Federal Employers' Liability Act in state courts, where their jurisdiction is adequate to the occasion, cannot be interfered with on the grounds of expense, inconvenience or harassment—which grounds, we repeat, are the bases for the doctrine of forum non conveniens.

The Supreme Court of Missouri, in its interpretation of the **Miles** and **Kepner** cases, held no more than this, which

is in complete harmony with those cases, the earlier decisions of this Court, and the legislative intent of the Congress in its revision of the Judicial Code. The Supreme Court of Missouri did go on to twice rule that Missouri permits its citizens to institute and maintain Federal Employers' Liability cases in its courts (R. 74, 224 S. W. 2d, l. c. 110)—which is but another way of saying that the jurisdiction of the Missouri courts is appropriate to the occasion—and concluded that the non-citizen plaintiffs in the Blevins and Seachris cases here involved were neither subject to having their actions dismissed upon the forum non conveniens doctrine, nor to otherwise be deprived of the same right which was accorded to citizens of Missouri to maintain their cases in the courts of that state.

Under these circumstances, we submit, the Supreme Court of Missouri was correct, and did not erroneously interpret either the **Miles** or the **Kepner** cases, when it ruled:

> "* * * it is clear that under the Kepner and Miles cases, supra, a state court cannot dismiss a Federal Employers' Liability case solely under the forum non conveniens doctrine" (R. 73; 224 S. W. 2d, l. c. 109).
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> * * * * * * *
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> "Under the Kepner and Miles cases, supra, the doctrine of forum non conveniens is not open to relators in the two Federal Employers' Liability cases in question" (R. 75; 224 S. W. 2d, l. c. 110).

Compare, also, **Leet v. Union Pacific R. Co.**, 25 Cal. 2d 605, 155 P. 2d 42, 158 A. L. R. 1008, certiorari denied 325 U. S. 866, 65 S. Ct. 1403, 89 L. Ed. 1986.

The Court itself, since the decision in the **Miles** case, has twice said that decision rules that forum non conveniens is not available in Federal Employers' Liability cases in State courts (Cf. **Gulf Oil Corporation v. Gilbert,**

330 U. S. 501, 505; **Ex Parte Collett**, 337 U. S. 55, 57). Certainly, there can be no error in the similar ruling of the Supreme Court of Missouri below, unless there has been some change in either the statutory or decisional law since, and that there has been none is plain. No more recent authority then **Ex Parte Collett**, supra, has been cited by petitioners, and that case was decided in 1949, since the revision of the Judicial Code in 1948 which we have discussed above.

Petitioners make extensive argument that this Court, in **Douglas v. New York, N. H. & H. R. Co.**, 279 U. S. 377, "settled the question" that the application of the doctrine of forum non conveniens may be applied by a state court in Federal Employers' Liability cases, and petitioners contend, in that connection, that the Supreme Court of Missouri misconstrued the **Douglas** case when it stated that it rested upon a New York statute (Petitioners' briefs, pp. 15-16). These contentions are untenable.

The **Douglas** case does not even mention the term "*forum non conveniens.*" That the **Douglas** case was predicated upon a particular New York statute has been clearly pointed out by this Court, as well as by other courts. In **Miles v. Illinois Central R. Co.**, 315 U. S. 698, 704, footnote 6, this Court said that the decision in the **Douglas** case was based upon "a statute of New York, which gave only discretionary jurisdiction to suits by non-residents but compulsory jurisdiction to suits by residents, * * * treated citizens and non-citizens alike and tested their right to maintain an action by their residence or non-residence." As we have heretofore pointed out, ante, pp. 31-33, the decision in **Bright v. Wheelock**, 323 Mo. 840, 20 S. W. 2d 684, similarly construed the **Douglas** case. The Supreme Court of Minnesota, in construing the **Douglas** case in **Bright v. Chicago, R. I. & P. R. Co.**, 180 Minn. 42, 230 N. W. 450, 467, said:

"The state court in the Douglas Case held that the law of New York was not unconstitutional in permitting its courts in the exercise of their discretion to reject jurisdiction. **If it had held otherwise, it would have been sustained by the Supreme Court, for it was construing its own statutes; or, if not, it was determining its local law.** In short, the Supreme Court said that under the New York statute as construed there was nothing offensive to the Federal Constitution. **We have no statute like that of New York.** Our law from the beginning has permitted without giving discretion suits such as the one before us. To refuse jurisdiction, the Constitution aside, would result in a complete change of the local law—a change which we do not wish to make. And this may be noted: If there were no privileges and immunities clause in the Constitution, such actions as this could be maintained under our repeated holdings—under our law from the earliest times; and, of course, the privileges and immunities clause does not lessen the plaintiff's rights." (Emphasis supplied.)

The case of **Murnan v. Wabash R. Co.**, 246 N. Y. 244, 158 N. E. 508, also relied upon by petitioners here, involved exactly the same statute of New York as was involved in the Douglas case just above discussed. There, as in the Douglas case, the power to decline jurisdiction had its origin in a valid state statute. We repeat, no such statute exists in Missouri.

Actually, the **Douglas** case supports our position here. The vital element present there, and lacking here, was a valid state statute vesting discretionary power in the state trial court to decline to exercise jurisdiction by dismissing the plaintiff's action. That there is no such discretion under the statutes of Missouri was made plain in **Bright v. Wheelock**, 323 Mo. 840, 20 S. W. 2d 684, 700, hereinbefore

quoted at length, ante, pp. 31-33, where the **Douglas** case was discussed, and was further made clear by the Supreme Court of Missouri in its decision below where, in referring to the **Douglas** case, it said (R. 73-74; 224 S. W. 2d, l. c. 110):

> "We do not think this case sustains the relator. The common law doctrine of forum non conveniens is not even mentioned in the opinion. In the first place, Missouri does not have a statute similar to the New York statute which the courts of that state have held to give them discretionary power to dismiss an action brought by a non-resident as distinguished from a citizen of another state."

The language of the **Douglas** case itself distinguishes that case, and the situation there, from the cases at bar, and the situation here. In the **Douglas** case, this Court said (297 U. S., l. c. 387-388):

> "It may very well be that if the Supreme Court of New York were given no discretion [by the statutes of that state], it would be under a duty." (Bracketed portion supplied.)

The duty which this Court there had in mind was, undoubtedly, that to take jurisdiction and hear the case, under the doctrines of the earlier decisions to the effect that the state courts must take jurisdiction where their jurisdiction, as prescribed by local laws, is appropriate to the occasion (**Mondou v. New York, N. H. & H. R. Co.**, 223 U. S. 1, 55, 59; **McKnett v. St. Louis & S. F. R. Co.**, 292 U. S. 230, 232-233), irrespective of matters of expense, inconvenience or harassment (**Hoffman v. State ex rel. Foraker**, 274 U. S. 21, 23)—which doctrines were subsequently carried into the later decisions (**Denver & R. G. W. R. Co. v. Terte**, 284 U. S. 284, 287-288; **Miles v. Illinois Central R. Co.**, 315 U. S. 698, 705).

The very most that can be said about the **Douglas** case is that it holds that, subject to the restrictions of the Federal Constitution, a state, by its policy as announced by its local laws, may determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them—a proposition which is not disputed by us and which was recognized by the Supreme Court of Missouri in its decision below when it said (R. 75; 224 S. W. 2d, l. c. 110):

> "The Federal Employers' Liability Act does not compel the courts of this state to hear cases arising under that act, but it empowers our courts to do so."

The **Douglas** case, of a certainty, cannot be perverted so as to constitute authority that **all** state courts have a right or discretion to decline jurisdiction of transitory causes of action—whether predicated upon the Federal Employers' Liability Act, or otherwise—irrespective of a policy of the particular state, as determined by its local laws, to give all persons access to its courts in such cases. Such a holding would be inconsistent with what petitioners here characterize as "the fundamental right of the states to regulate and control the venue and procedure of state courts" (Petitioners' briefs, p. 26). Such a holding would, also, be inconsistent with the decision in the **Miles** case (315 U. S. 698), which clearly ruled that forum non conveniens was not applicable to Federal Employers' Liability cases in state courts, and went on to point out (in footnote 6) that such a doctrine was not in conflict with the **Douglas** case.

V.

Petitioners also contend that the construction which the Supreme Court of Missouri placed upon Section 6 of the Federal Employers' Liability Act invades the fundamental right of the states to regulate and control the venue and procedure of state courts.

We think this contention is due to a misconception of what the Supreme Court of Missouri decided. We have carefully read the opinion of the Supreme Court of Missouri below, and we find that it nowhere adverts to Section 6 of the Federal Employers' Liability Act, excepting in its quotations from the opinions of this Court. The Supreme Court of Missouri did not conclude, as petitioners aver, that "the Congress undertook to regulate and control the venue and procedure in state courts in actions under the Act" (Petitioners' briefs, p. 26). On the contrary, it clearly recognized that the Federal Employers' Liability Act does not compel the courts of Missouri to hear cases arising under that act, but it empowers the Missouri courts to do so (R. 74; 224 S. W. 2d, l. c. 110), and went on to hold that since Missouri permits its citizens to maintain in its courts transitory actions based on that act (R. 74; 224 S. W. 2d, l. c. 110), the jurisdiction of the Missouri courts was "appropriate to the occasion" and could not deny similar access to other persons without violating Article 4, Section 2, of the Constitution of the United States (R. 74, 74-75; 224 S. W. 2d, l. c. 110), and without depriving such persons of the right to sue in state courts of proper venue where their jurisdiction is adequate, which this Court in the **Miles** case characterized as "springing from the federal law" and being "of the same quality as the right to sue in federal courts."

The Supreme Court of Missouri has not done what petitioners assert it has done. Petitioners have merely built up and knocked down another straw man.

VI.

Petitioners also assert that, since the enactment of Sec. 1404 (a) of the Judicial Code [28 U. S. C. A., § 1404 (a)], no possible inference can now be drawn from the Federal Employers' Liability Act forbidding the application of the

doctrine of forum non conveniens by state courts to actions under that act. This contention overlooks several matters.

In the first place, such contention overlooks that Sec. 1404 (a) does not constitute a statutory codification of the doctrine of forum non conveniens. That section provides merely for a "transfer" of a cause from one federal court to another, while the doctrine of forum non conveniens requires a dismissal of the action—a distinction which is clearly made in **Cinema Amusements, Inc., v. Loew's, Inc.,** D. C. Del., 85 F. Supp. 319, 322.

In the second place, this contention overlooks the complete history of the legislation which produced Sec. 1404 (a), which we have above discussed, and which demonstrates the congressional intent "to assure a hearing to the employee in a state court" whenever and wherever the jurisdiction of such court is adequate to the occasion.

In the third place, this contention overlooks that this court, after the adoption of Sec. 1404 (a), in **Ex Parte Collett,** 337 U. S. 55, 57, reaffirmed the doctrine of **Miles v. Illinois Central R. Co.,** 315 U. S. 698, to the effect that forum non conveniens is not available in Federal Employers' Liability Act suits in state courts.

Certainly, under these circumstances, the only permissible inference is that the federal public policy as to the applicability of forum non conveniens to cases in the state courts under the Federal Employers' Liability Act is identically the same now as it was before the enactment of Sec. 1404 (a), and is that such doctrine is not applicable to such cases. This, the Supreme Court of Missouri correctly and specifically ruled when it said (R. 70; 224 S. W. 2d, l. c. 108):

"Thus, with reference to Federal Employers' Liability actions brought in state courts the law is the same now as it was before Sec. 1404 (a) was enacted."

And, further (R. 75; 224 S. W. 2d, l. c. 111):

"Under the Kepner and Miles cases, supra, the doctrine of forum non conveniens is not open to relators in the two Federal Employers' Liability cases in question."

VII.

Petitioners finally assert that the application of the doctrine of forum non conveniens in Federal Employers' Liability cases in state courts is not violative of the "Privileges and Immunities" clause of Article IV, Section 2, of the Constitution of the United States.

In this connection, petitioners assert that the decision in **Douglas v. New York, N. H. & H. R. Co.**, 279 U. S. 377, "held * * * that the application of the doctrine of forum non conveniens by a state court in a F. E. L. A. case would not violate" such constitutional provision. We submit that the **Douglas** case held no such thing. We have previously pointed out that the term "forum non conveniens" nowhere appears in the opinion in the **Douglas** case. We have also previously pointed out that in **Miles v. Illinois Central R. Co.**, 315 U. S. 698, 704, footnote 6, this Court clearly pointed out that the Douglas case avoided conflict with Article IV, Section 2, of the Constitution (which relates to "citizens" only) because the New York statute there involved tested the right to maintain an action by "residence" or "non-residence," rather than by "citizenship."

We submit that where, as here, a state permits its citizens to institute and maintain in its courts actions predicated upon the Federal Employers' Liability Act, irrespec-

tive of where the cause of action might have arisen and irrespective of considerations of expense, inconvenience and harassment (R. 74, 74-75; 224 S. W. 2d, l. c. 110), to deny citizens of other states that same right by the application of the doctrine of forum non conveniens would clearly violate Article IV, Section 2, of the Constitution of the United States (**Cole v. Cunningham**, 133 U. S. 107, 113-114; **Chambers v. Baltimore & O. R. Co.**, 207 U. S. 142, 148; **Missouri Pacific R. Co. v. Clarendon Boat Oar Co.**, 257 U. S. 533, 535; **McKnett v. St. Louis & S. F. R. Co.**, 292 U. S. 230, 233; **Miles v. Illinois Central R. Co.**, 315 U. S. 698, 704). That is what the Supreme Court of Missouri held in these cases. What might be held under some other circumstances is hardly pertinent to a review of that decision of the Missouri court.

CONCLUSION.

For the reasons, and upon the authorities, hereinbefore referred to, we most respectfully submit that this Court has no jurisdiction to review the decision of the Supreme Court of Missouri in these cases, because such decision was based, independently and adequately, upon a non-federal ground, but that, in any event, the decision of the Supreme Court of Missouri was correct, in full accord with the Federal Constitution and statutes, the decisions of this Court, and the Congressional intent that injured employees in actions under the Federal Employers' Liability Act should be assured of a hearing in the state courts, when their jurisdiction, as prescribed by local laws, is adequate and appropriate.

Respectfully submitted,

HARVEY B. COX,
JOSEPH B. McGLYNN,
ROBERTS P. ELAM,
Attorneys for Respondents.